

IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Attn: Stephanie Cox
Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2005

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 31 '04	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05
Jan. 14 '05	Feb. 2	Feb. 22	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
May 18	June 8	June 28	July 13	July 15	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '06
June 29	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sept. 14	Oct. 19	Jan. 16 '06
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 9	Sept. 28	Nov. 2	Jan. 30 '06
July 29	Aug. 17	Sept. 6	Sept. 21	Sept. 23	Oct. 12	Nov. 16	Feb. 13 '06
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '06
Aug. 24	Sept. 14	Oct. 4	Oct. 19	Oct. 21	Nov. 9	Dec. 14	Mar. 13 '06
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 4	Nov. 23	Dec. 28	Mar. 27 '06
Sept. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '06	Apr. 10 '06
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 2	Dec. 21	Jan. 25 '06	Apr. 24 '06
Oct. 21	Nov. 9	Nov. 29	Dec. 14	***Dec. 14***	Jan. 4 '06	Feb. 8 '06	May 8 '06
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Dec. 30	Jan. 18 '06	Feb. 22 '06	May 22 '06
Nov. 16	Dec. 7	Dec. 27	Jan. 11 '06	Jan. 13 '06	Feb. 1 '06	Mar. 8 '06	June 5 '06
Dec. 2	Dec. 21	Jan. 10 '06	Jan. 25 '06	Jan. 27 '06	Feb. 15 '06	Mar. 22 '06	June 19 '06
Dec. 14	Jan. 4 '06	Jan. 24 '06	Feb. 8 '06	Feb. 10 '06	Mar. 1 '06	Apr. 5 '06	July 3 '06
Dec. 30	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
1	Friday, June 17, 2005	July 6, 2005
2	Wednesday, June 29, 2005	July 20, 2005
3	Friday, July 15, 2005	August 3, 2005

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
EDUCATIONAL EXAMINERS BOARD[282]		
Penalty for failure to have appropriate licensure, 14.121(7) IAB 5/25/05 ARC 4197B	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 14, 2005 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Biodiesel and diesel fuels, number 1 and number 2 fuel oils, 20.2 IAB 5/11/05 ARC 4159B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	June 14, 2005 1 p.m.
Controlling pollution, 22.1(2) IAB 5/11/05 ARC 4160B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	June 13, 2005 1 p.m.
	Gritter Room, Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	June 16, 2005 1 p.m.
Road maintenance activity considered ordinary travel, 23.3(2) IAB 5/11/05 ARC 4158B	Conference Rooms Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	June 15, 2005 1 p.m.
HUMAN SERVICES DEPARTMENT[441]		
Subsidized adoptions, 201.2, 201.3(1), 201.6(1) IAB 5/25/05 ARC 4198B	Conference Room 104 City View Plaza 1200 University Ave. Des Moines, Iowa	June 16, 2005 8:30 to 10:30 a.m.
LABOR SERVICES DIVISION[875]		
Boilers and pressure vessels—fees, 200.4 IAB 6/8/05 ARC 4219B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	July 6, 2005 8:30 a.m. (If requested)
NATURAL RESOURCE COMMISSION[571]		
Docks and other structures on public waters, ch 16 IAB 6/8/05 ARC 4237B	Community Room City Hall Clear Lake, Iowa	July 7, 2005 6 p.m.
	Gull Point State Park Lodge West Okoboji Lake Milford, Iowa	July 11, 2005 6 p.m.
	Auditorium Wallace State Office Bldg. Des Moines, Iowa	July 12, 2005 6 p.m.

NATURAL RESOURCE COMMISSION[571] (Cont'd)

Barge fleeting regulations, ch 17 IAB 6/8/05 ARC 4242B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 30, 2005 10:30 a.m.
Leases of state-owned or dedicated public property, ch 18 IAB 6/8/05 ARC 4243B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 30, 2005 1:30 p.m.
Little River Lake, Decatur County; Zoning of Mississippi River, 40.51, 40.52 IAB 6/8/05 ARC 4236B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 28, 2005 10 a.m.
Kellerton Prairie Chicken Management Area, Ringgold County, 52.1(2) IAB 6/8/05 ARC 4235B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 28, 2005 10:30 a.m.

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Barbers, amendments to chs 21, 24, 26 IAB 5/25/05 ARC 4174B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 14, 2005 9 to 10 a.m.
Barbers—licensure and discipline, 21.2(1), 24.3(2), 25.2(33) IAB 5/25/05 ARC 4173B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 14, 2005 9 to 10 a.m.
Chiropractic physicians, amendments to chs 41, 44, 46 IAB 5/25/05 ARC 4176B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 14, 2005 10 to 11 a.m.
Chiropractic physicians— licensure and discipline, 41.2(1), 44.2(2), 44.3(2), 45.2 IAB 5/25/05 ARC 4175B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 14, 2005 10 to 11 a.m.
Cosmetology, amendments to chs 60, 62, 64 IAB 5/25/05 ARC 4190B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 14, 2005 1 to 2 p.m.
Cosmetology—continuing education and discipline, 64.2, 64.3(2), 65.2(35) IAB 5/25/05 ARC 4191B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 14, 2005 1 to 2 p.m.
Hearing aid dispensers, amendments to chs 121, 122, 125 IAB 5/25/05 ARC 4177B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 14, 2005 8 to 9 a.m.
Hearing aid dispensers—licensure and discipline, 121.2 to 121.4, 121.6(6), 122.3(2), 124.2(36) IAB 5/25/05 ARC 4178B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 14, 2005 8 to 9 a.m.

PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)

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Psychologists—licensure and discipline, 240.2(1), 240.7(1), 241.2(1), 242.2(32) IAB 6/8/05 ARC 4200B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 28, 2005 9 to 10 a.m.
Social workers, amendments to chs 280, 281, 284 IAB 6/8/05 ARC 4203B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 28, 2005 10 to 11 a.m.
Social workers—licensure and discipline, 280.3, 281.3(2), 283.2(31) IAB 6/8/05 ARC 4202B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 28, 2005 10 to 11 a.m.
Speech pathologists and audiologists, amendments to ch 300, 303, 305 IAB 6/8/05 ARC 4217B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 28, 2005 8 to 9 a.m.
Speech pathologists and audiologists, 300.3, 300.4(1), 300.6, 300.9, 303.1 to 303.3, 304.2(32) IAB 6/8/05 ARC 4203B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 28, 2005 8 to 9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Center for congenital and inherited disorders, 4.3 IAB 5/25/05 ARC 4192B	Telephone conference using telephone number posted on the Department's Web site www.idph.state.ia.us	June 14, 2005 10 to 11 a.m.
Immunizations, amendments to ch 7 IAB 5/25/05 ARC 4194B	Rooms 517/518, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa	June 14, 2005 9 to 11 a.m.
Special supplemental nutrition program for women, infants, and children (WIC), 73.5, 73.7, 73.8, 73.13, 73.19 IAB 6/8/05 ARC 4208B (ICN Network)	Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	June 28, 2005 8:30 to 9:30 a.m.
	Howe Hall Iowa State University Ames, Iowa	June 28, 2005 8:30 to 9:30 a.m.
	NIACC – 1 500 College Dr. Mason City, Iowa	June 28, 2005 8:30 to 9:30 a.m.
	High School 2701 Hill Ave. Spirit Lake, Iowa	June 28, 2005 8:30 to 9:30 a.m.
	Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	June 28, 2005 8:30 to 9:30 a.m.
	Prairie Lakes AEA 8 330 Avenue M Fort Dodge, Iowa	June 28, 2005 8:30 to 9:30 a.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)
(ICN Network)

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Western Hills AEA 12 1520 Morningside Ave. Sioux City, Iowa	June 28, 2005 8:30 to 9:30 a.m.
Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	June 28, 2005 8:30 to 9:30 a.m.
AEA 26 3712 Cedar Heights Dr. Cedar Falls, Iowa	June 28, 2005 8:30 to 9:30 a.m.
Southwestern Community College – 2 2520 W. McClane Osceola, Iowa	June 28, 2005 8:30 to 9:30 a.m.
Scott Community College – 1 500 Belmont Rd. Bettendorf, Iowa	June 28, 2005 8:30 to 9:30 a.m.
Room T201 University of Dubuque 2000 University Ave. Dubuque, Iowa	June 28, 2005 8:30 to 9:30 a.m.
Kirkwood Community College – 2 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	June 28, 2005 8:30 to 9:30 a.m.
Room 103, Sioux Center AEA 4 1382 Fourth Ave. NE Sioux Center, Iowa	June 28, 2005 8:30 to 9:30 a.m.
Mount Pleasant Treatment Center 1200 E. Washington Mount Pleasant, Iowa	June 28, 2005 8:30 to 9:30 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Bail enforcement, private investigation and private security businesses, 2.3 to 2.7, 2.11(1), 2.16(5) IAB 6/8/05 ARC 4226B	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 1, 2005 10 a.m.
Retail sales of pseudoephedrine, adopt ch 174 IAB 6/8/05 ARC 4228B (See also ARC 4227B herein)	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 1, 2005 9:30 a.m.

REAL ESTATE COMMISSION[193E]

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UTILITIES DIVISION[199]

Telecommunications providers,
amendments to ch 22
IAB 5/11/05 **ARC 4157B**

Hearing Room
350 Maple St.
Des Moines, Iowa

June 24, 2005
9 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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ARC 4213B**EDUCATION DEPARTMENT[281]****Notice of Termination**

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on April 13, 2005, as **ARC 4099B**, amending Chapter 1, "Organization and Operation," Iowa Administrative Code.

The Notice was intended to implement Iowa Code section 68B.4 [2004 Iowa Acts, chapter 1091, section 5]. With the passage of 2005 Iowa Acts, House File 253, section 4, the Iowa Ethics and Campaign Disclosure Board is now mandated to adopt rules concerning the procedure for officials of regulatory agencies to obtain consent to sell goods or services. Thus, the proposed rule will no longer be accurate, and the State Board of Education is terminating the rule making commenced in **ARC 4099B**.

ARC 4218B**ENGINEERING AND LAND
SURVEYING EXAMINING
BOARD[193C]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 3, "Application and Renewal Process," and Chapter 4, "Engineering Licensure," Iowa Administrative Code.

These amendments are intended to clarify the application process for the Fundamentals of Engineering examination; change the application due dates for the Fundamentals of Land Surveying, Principles and Practice of Land Surveying, and Principles and Practice of Engineering examinations; remove the requirement that notification of license expiration be sent by certified mail; and clarify the terms "subprofessional work" and "professional work" for purposes of providing work experience information on the professional engineering examination application.

Waiver of these rules may be sought pursuant to 193—Chapter 5.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before June 28, 2005. Comments should be directed to Gleen Coates, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; telephone (515)281-7360.

These amendments are intended to implement Iowa Code sections 542B.6, 542B.13, 542B.14, 542B.15, and 542B.17.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)

281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 193C—3.2(542B) as follows:

193C—3.2(542B) Examination application components and due dates.

3.2(1) Fundamentals of Engineering examination application components and due dates. Applications for the Fundamentals of Engineering examination from college seniors studying an ABET/EAC or Canadian Engineering Accreditation Board (CEAB) approved curriculum are submitted directly to the examination service selected by the board to administer the examinations and must be received on or before September 1 of each year for the examination given in the fall and on or before March 1 of each year for the examination given in the spring. All other applications for the Fundamentals of Engineering examination require a more detailed review and must, therefore, be submitted to the board office, postmarked on or before August 1 of each year for the examination given in the fall and on or before February 1 of each year for the examination given in the spring. Applications from the following applicants are submitted on forms provided by the examination service: any applicant who has an ABET/EAC or Canadian Engineering Accreditation Board (CEAB) accredited engineering degree; any applicant who is enrolled as a senior student in an ABET/EAC or CEAB accredited engineering curriculum; or any applicant who has a master's degree in engineering from an institution in the United States with an accredited bachelor's degree in the same curriculum. Applicants who do not meet the criteria above must submit an application for approval to the board on forms provided by the board. The components of this application include: the completed, notarized application form; references; and transcripts.

3.2(2) Fundamentals of Land Surveying examination application components and due dates. The components of this application include: the completed, notarized application form; references pursuant to 193C—paragraph 5.1(5)"b"; and transcripts. Fundamentals of Land Surveying examination applications require a detailed review and must, therefore, be submitted to the board office, postmarked on or before August 1 July 15 of each year for the examination given in the fall and on or before February 1 January 15 of each year for the examination given in the spring.

3.2(3) Principles and Practice examination application components and due dates. The components of the application for the Principles and Practice of Engineering and the Principles and Practice of Land Surveying examinations include: the completed, notarized application form; the ethics questionnaire; references; transcripts; verification of examination records; and the project statement. Principles and Practice of Engineering and Principles and Practice of Land Surveying examination applications require a detailed review and must, therefore, be submitted to the board office, postmarked on or before August 1 July 15 of each year for the examination given in the fall and on or before February 1 January 15 of each year for the examination given in the spring.

ITEM 2. Amend subrule 3.4(4) as follows:

3.4(4) Notification of expiration. The board shall notify by certified mail, return receipt requested, licensees whose certificates of licensure have expired. This notification may be provided through publication in the division's newsletter. The failure of the board to provide this courtesy notification,

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

or the failure of the licensee to receive or sign for the courtesy notification, shall not extend the date of expiration.

ITEM 3. Amend subrule **4.1(7)**, paragraph “c,” as follows:

c. Progression. The record of experience shall indicate successive and continued progress from initial, *subprofessional* work of simpler character to recent, *professional* work of greater complexity and a higher degree of responsibility, as well as continued interest and effort on the part of the applicant toward further professional development and advancement. *In evaluating this progression, the board will consider both subprofessional and professional activity as reported by the candidate. However, only work experience obtained after receipt of the qualifying degree by the candidate will be considered, except as described in 193C—paragraph 4.1(7)“d.” Subprofessional work includes the time spent in drafting, as an engineering technician or engineering assistant or inspector, or in similar work under direct supervision, including work where the personal responsibility and technical knowledge required are small, that is, minor positions in which the responsibility is slight and the individual performance of a task that has been set and supervised by a supervisor is all that is required. Professional work includes the time during which the applicant was occupied in engineering work of higher grade and responsibility than that defined above as subprofessional work. Time spent in teaching engineering subjects in a college or university at the level of assistant professor or higher may be listed as professional work.*

ARC 4241B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Termination**

Pursuant to the authority of Iowa Code section 459.103, the Environmental Protection Commission terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on February 16, 2005, as **ARC 4003B**, proposing to amend Chapter 53, “Protected Water Sources—Purposes—Designation Procedures—Information in Withdrawal Applications—Limitations—List of Protected Sources,” Iowa Administrative Code.

The proposed amendment was intended to add a protected source to the list of protected sources so designated by rule. A public hearing was held on March 10, 2005, in Camanche, on the proposed rule making. Primarily negative reaction to the proposed Chapter 53 designation was received at the hearing. In response to a request from the City of Camanche, the public comment period was extended to May 2, 2005. The U.S. Environmental Protection Agency held a public availability session on April 12, 2005, in Camanche on related matters. Substantial local opposition to the Chapter 53 rule making was received at that meeting, including a petition signed by 124 residents of the area. As a result of the public response in opposition to this amendment, rule making for **ARC 4003B** is terminated.

ARC 4240B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Termination**

Pursuant to the authority of Iowa Code section 459.103, the Environmental Protection Commission terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on October 13, 2004, as **ARC 3736B**, proposing to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The proposed amendments were primarily intended to conform Iowa’s regulation of concentrated animal feeding operations to amended regulations adopted by the U.S. Environmental Protection Agency (EPA) in the February 12, 2003, Federal Register. A decision by the U.S. Court of Appeals, 2nd Circuit, on February 28, 2005, vacated portions of EPA’s amended regulations. As a result, the Department must significantly modify its proposed amendments to conform with the remaining EPA regulations; this cannot be accomplished within the required 180 days. Therefore, rule making for **ARC 3736B** is terminated.

ARC 4225B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 239B.4(4), the Department of Human Services proposes to amend Chapter 41, “Granting Assistance,” Chapter 43, “Alternate Payees,” Chapter 45, “Payment,” Chapter 60, “Refugee Cash Assistance,” and Chapter 93, “PROMISE JOBS Program,” Iowa Administrative Code.

The proposed amendments change requirements for the Family Investment Program (FIP) and the PROMISE JOBS (Promoting Independence and Self-Sufficiency through Employment Job Opportunities and Basic Skills) program by:

- Removing an exemption from PROMISE JOBS participation for a child on FIP aged 16 or older who has left school, been referred to PROMISE JOBS, and signed a family investment agreement (FIA) that includes enrollment and attendance in school. Currently, once the child is enrolled in school, the child once again becomes exempt from FIA requirements. Keeping a child who has previously dropped out of school in the PROMISE JOBS program will allow PROMISE JOBS to provide services to the child and monitor the child’s school attendance. The child will be subject to a limited benefit plan if the child abandons the FIA by dropping out of school again.

- Limiting the effect of a limited benefit plan chosen by a needy relative who assumes the role of parent to cancellation of FIP for the needs of the relative only, instead of the whole eligible group. A needy relative who chooses a limited benefit plan for the first time can immediately reapply and

HUMAN SERVICES DEPARTMENT[441](cont'd)

receive FIP for the needs of the children only, without taking any action to resolve the limited benefit plan. The same policy applies to a subsequent limited benefit plan after the six-month minimum period of ineligibility expires. With the change, the relative can continue to receive FIP for the needs of the children without reapplying for FIP.

The amendments also remove little-used and ineffective Family Investment Program provisions, including:

- A requirement to make a referral for services when a minor parent is denied FIP because the minor parent does not live with a parent or legal guardian and does not have good cause. As mandated reporters of child abuse, Department income maintenance workers will continue to make child protective referrals when they have reason to believe a child is endangered. They will also continue to make referrals to the Department service unit or to local community agencies when participants appear to need other services.

- Provisions for the Department to issue a FIP grant in the form of vendor payments instead of cash, to appoint a protective payee for a FIP participant, or to petition the probate court to appoint a conservator for a FIP participant. These provisions are impracticable because it is extremely difficult to locate agencies or individuals willing and able to act as conservators or payees and to provide appropriate monitoring of payees. Families may voluntarily request that their benefits be paid to another payee of their choice. When a FIP participant has difficulties with money management, income maintenance workers can make referrals to the Family Development and Self-Sufficiency (FaDSS) program and to local community agencies that provide assistance with money management.

These amendments also correct references and update rules to reflect current policy and procedures.

These amendments do not provide for waivers in specified situations. Most of the changes are technical or are beneficial to participants. Existing rules require PROMISE JOBS to consider any barriers or problems the individual may have with participation when negotiating the FIA activities and level of participation. Individuals who believe themselves disadvantaged by these rules may request a waiver under the Department's general rule on exceptions at 441—1.8(17A, 217).

Any interested person may make written comments on the proposed amendments on or before June 29, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code chapter 239B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 441—41.22(239B) as follows:

Amend subrule **41.22(16)**, paragraph “c,” as follows:

c. The minor parent is in a foster care-independent ~~supervised apartment~~ living arrangement.

Rescind and reserve subrule **41.22(18)**, paragraph “b,” subparagraph (3).

Amend subrule **41.22(19)**, paragraph “a,” subparagraph (5), as follows:

(5) Court, criminal, child protective services, social services or other records which verify that the parents or legal guardian of the minor parent is deceased, missing or living in another state, or that the minor parent is in a foster care ~~independent supervised apartment~~ living arrangement, the job corps solo parent program, maternity home or other licensed adult-supervised supportive living arrangement.

ITEM 2. Amend rule 441—41.24(239B) as follows:

Amend subrule **41.24(2)** as follows:

Amend paragraph “d” as follows:

d. A person found eligible for supplemental security income (SSI) benefits based on disability or blindness. ~~The exemption based on disability is amended effective April 1, 2002. A person exempt from PROMISE JOBS participation before July 1, 2002, due to a disability according to the Americans with Disabilities Act and determined unable to participate in PROMISE JOBS shall be referred to PROMISE JOBS, unless eligible for SSI benefits due to a disability or blindness. The referral shall occur at the time of the next semiannual or annual review or exempt status re-determination as described at subrule 41.24(5), but no later than June 30, 2003.~~

Amend paragraph “e,” introductory paragraph, as follows:

e. A person who is aged 16 to 19, and is not a parent, who attends an elementary, secondary or equivalent level of vocational or technical school full-time. *For persons who lose exempt status for not attending school and who are referred to PROMISE JOBS on or after November 1, 2005, once the person has signed a family investment agreement, the person shall remain referred to PROMISE JOBS and subject to the terms of the agreement.*

Amend subrule 41.24(8) as follows:

Amend the introductory paragraph as follows:

41.24(8) The limited benefit plan (LBP). When a participant responsible for signing and meeting the terms of a family investment agreement as described at rule 441—93.109(239B) chooses not to sign or fulfill the terms of the agreement, the FIP assistance unit or the individual participant shall enter into a limited benefit plan. A limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to the participant as defined at 441—subrule 7.7(1). Once the limited benefit plan is imposed, FIP eligibility no longer exists as of the first of the month after the month in which timely and adequate notice is given to the participant. Upon the issuance of the notice to impose a limited benefit plan, the person who chose the limited benefit plan can reconsider and end the limited benefit plan, but only as described at ~~paragraphs paragraph~~ 41.24(8)“d.” and “f.” A participant who is exempt from PROMISE JOBS is not subject to the limited benefit plan.

Amend paragraph “b” as follows:

Amend subparagraphs (1) and (2) as follows:

(1) When the participant responsible for the family investment agreement is a parent ~~or needy specified relative~~, the limited benefit plan shall apply to the entire FIP eligible group as defined at subrule 41.28(1).

(2) When the participant choosing a limited benefit plan is a needy specified relative ~~who acts as payee when the parent is in the home but is unable to act as payee~~, or is a dependent child's stepparent who is in the FIP eligible group because of incapacity, the limited benefit plan shall apply only to the individual participant choosing the plan. *EXCEPTION: The limited benefit plan shall apply to the entire FIP eligible group as defined at subrule 41.28(1) when a needy specified relative who assumes the role of parent is responsible for the*

HUMAN SERVICES DEPARTMENT[441](cont'd)

family investment agreement and chose a limited benefit plan effective October 1, 2005, or earlier.

Amend subparagraph (3) as follows:

Amend numbered paragraph "1" as follows:

1. When the adult parent or ~~needy specified relative~~ chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the entire eligible group, even though the minor parent has not chosen the limited benefit plan. However, the minor parent may reapply for FIP benefits as a minor parent living with self-supporting parents or a minor parent living independently and continue in the family investment agreement process.

Adopt ~~new~~ numbered paragraph "4" as follows:

4. When the needy specified relative chooses the limited benefit plan, the requirements of the limited benefit plan shall apply as described at subparagraph 41.24(8)"b"(2).

ITEM 3. Amend subrule 41.27(7), paragraphs "v" and "w," as follows:

v. Compensation in lieu of wages received by a child ~~under the Job Training Partnership Act of 1982 funded through an employment and training program of the U.S. Department of Labor.~~

w. Any amount for training expenses included in a payment issued ~~under the Job Training Partnership Act of 1982 funded through an employment and training program of the U.S. Department of Labor.~~

ITEM 4. Rescind and reserve subrule 43.21(2).

ITEM 5. Rescind and reserve rule 441—43.22(239B).

ITEM 6. Rescind and reserve rule 441—43.23(239B).

ITEM 7. Amend rule 441—45.21(239B) as follows:

441—45.21(239B) Address. Assistance warrants shall be mailed to the recipient's current address or, upon request, to a post office box, bank, or to any other address for which the recipient has good reason for the request. *Assistance If the recipient has a court-appointed conservator or guardian, assistance warrants shall be mailed to the protective payee, conservator, or guardian (if applicable) in cases involving said persons.* Assistance may also be paid by direct deposit to the recipient's own account in a financial institution or by means of electronic benefits transfer.

ITEM 8. Amend subrule 60.8(1), paragraphs "c" and "d," as follows:

c. A refugee who is caring for another member of the household who has a physical or mental impairment which requires, as determined by a physician or licensed or certified psychologist and verified by the department, care in the home on a substantially continuous basis, and no other appropriate member of the household is available. ~~The condition shall be established as specified in 441—paragraph 41.24(2)"d."~~

d. A woman who is pregnant if it has been medically verified that the child is expected to be born in the month in which registration would otherwise be required or within the next six months. ~~Verification of the pregnancy and estimated date of birth shall be obtained in the same manner as specified in 441—paragraph 41.24(2)"d."~~

ITEM 9. Amend subrule 93.111(3), as follows:

Amend the introductory paragraph as follows:

93.111(3) Requirements for ~~parents persons~~ aged 19 and or younger. Assessment and development of FIA options shall follow these guidelines for ~~parents persons~~ under the age of 20.

Amend paragraphs "b" and "c" as follows:

b. ~~Parents Persons~~ aged 16 or 17 who have not completed high school shall be expected to use enrollment or continued attendance in high school completion or the GED program as a first step in the FIA. ~~Parents Persons~~ deemed incapable of participating in these activities by the local education agency shall choose other FIA options.

c. ~~Parents Persons~~ who are aged 18 or 19 who have not completed high school shall be expected to use enrollment or continued attendance in high school completion or the GED program as a first step in the FIA if assessment indicates the ~~parents are~~ *person is* capable of completing regular high school, alternate high school, or GED. ~~Parents Persons~~ deemed incapable of participating in these activities shall choose other FIA options.

ITEM 10. Amend subrule 93.114(7) as follows:

93.114(7) Testing ~~prior to before~~ plan approval. ~~Prior to Before~~ plan approval for a client requesting GED, adult basic education, or English as a second language training, testing shall be conducted, when available, to determine a projected length of time for which the plan shall be approved. In regard to GED testing, a transportation allowance as described at subrule 93.10(6) ~~93.110(6)~~ and child care expenses shall be allowed if required in order for the client to participate.

ARC 4224B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44, the Department of Human Services proposes to rescind Chapter 180, "Respite Care Services," and to amend Chapter 182, "Family-Centered Services," Iowa Administrative Code.

These amendments end the family-centered respite care services program for children with mental retardation or other developmental disabilities by rescinding Chapter 180. This program was established in 1992 to offer periodic respite for the primary caregivers of children whose disability placed them at risk of child abuse or placement outside the family home. Under the program, families could receive substitute care for their child, equivalent to one weekend per month, to relieve stress on the family.

As part of the redesign of the child welfare system mandated by 2003 Iowa Acts, chapter 178, the Department is focusing its resources on children and families that are most at risk of child maltreatment. Many of the families that have used the family-centered respite services will no longer be eligible for family-centered services under the child welfare redesign because there are no current child abuse assessments on the children and they are not under court jurisdiction.

Services for this population are now available through other programs, primarily the Medicaid home- and community-based mental retardation waiver program. Participation in the waiver program is often a more desirable option for families, since the waiver program offers a wider va-

HUMAN SERVICES DEPARTMENT[441](cont'd)

riety of supports and does not require the family to request services through the child welfare system. Utilization of the family-centered respite care services program has diminished over time to an extremely low level, and only a few providers now offer the service.

These amendments do not provide for waivers because they rescind the affected rules.

Any interested person may make written comments on the proposed amendments on or before June 29, 2005. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4223B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 4207B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 51, "Hospitals," Iowa Administrative Code.

The proposed amendments update the Department's rules to reflect the current edition of the Food and Drug Administration's (FDA) Model Food Code, the American Institute of Architects Guidelines for Construction and Equipment of Hospital and Medical Facilities, and the Code of Federal Regulations (CFR). The proposed amendments also make technical changes to the designation of critical access hospitals by stipulating those Iowa counties that are not considered rural.

There is no fiscal impact associated with the proposed amendments as they simply update the Department's administrative rules to the current editions of the federally recognized publications used in the inspection of hospitals licensed in Iowa.

The proposed amendments were presented to the Hospital Licensing Board at its March 30, 2005, meeting at which time they were approved by the Board. The State Board of Health initially reviewed the proposed amendments at its May 11, 2005, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before June

28, 2005. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to david.werning@dia.state.ia.us.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 51.2(7) as follows:

51.2(7) Hospitals not accredited by the JCAHO or AOA shall be inspected by the department utilizing the current Medicare conditions of participation found in Title XVIII of the federal Social Security Act and 42 CFR Part 482, Subparts A, B, C, D, and E, or 42 CFR Part 485, Subpart F as of October 1, 1997 2004. The department may promulgate additional standards. Where practical, surveys for state licensure purposes shall be performed concurrently with Medicare certification.

ITEM 2. Amend subrule 51.18(3) as follows:

51.18(3) The hospital must ensure that all laboratory services provided to its patients are performed in a laboratory certified in accordance with the Code of Federal Regulations in 42 CFR Part 493, October 1, 2004 2004.

ITEM 3. Amend subrule **51.20(2)**, paragraph "j," subparagraph (2), as follows:

(2) Dry or staple items shall be stored at least six inches (15 cm) above the floor in a ventilated room, not subject to sewage or wastewater backflow, contamination by condensation, leakage, rodents or vermin in accordance with the Food Code, 1999 2001 Edition and 2003 Supplement, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Washington, DC 20204.

ITEM 4. Amend subrule **51.20(2)**, paragraph "k," introductory paragraph, as follows:

k. Sanitation. Unless otherwise indicated, the sanitary provisions of the 1999 Food Code, 2001 Edition and 2003 Supplement, shall apply.

ITEM 5. Amend subrule **51.20(4)**, paragraph "a," subparagraph (3), as follows:

(3) Fixed and mobile equipment in the food service area shall meet the American Institute of Architects Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1996-1997 2001 Edition, and the 1999 Food Code, 2001 Edition and 2003 Supplement. Equipment shall be located to ensure sanitary and safe operation and shall be of sufficient size to handle the needs of the hospital.

ITEM 6. Amend subrule 51.53(1) as follows:

51.53(1) The hospital shall be no less than 35 miles from another hospital or no less than 15 miles over secondary roads or shall be designated by the department of public health as a necessary provider of health care prior to January 1, 2006.

ITEM 7. Amend subrule 51.53(2) as follows:

51.53(2) The hospital shall be a public or nonprofit hospital and shall be located in a county in a rural area. *Rural counties do not include Black Hawk, Johnson, Linn, Polk,*

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Pottawattamie, Scott and Woodbury Counties. All other counties are considered to be in rural areas for purposes of this subrule.

ARC 4205B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, "Residential Care Facilities," Iowa Administrative Code.

The proposed amendments make technical corrections by changing the name of the "care review committee" to the "resident advocate committee," clarifying the acceptable wash and rinse temperature for dishwashing machines used in some residential care facilities, rewriting the service plan requirements for the admission of residents into a residential care facility, and modifying the medication administration rules to allow certified medication managers to administer medications in certain facilities.

The Department has determined that there is no fiscal impact associated with adoption of the proposed amendments. Also, the proposed amendments contain no waiver provision, as they are technical in nature and will not impact any regulated entity.

The proposed amendments were initially reviewed by the State Board of Health at its May 11, 2005, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 28, 2005. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to david.werning@dia.state.ia.us.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **57.19(3)** by adding **new** paragraph "**P**" as follows:

1. In a freestanding residential care facility licensed for 15 or fewer beds, a person who has successfully completed a state-approved medication manager course may administer medications.

ITEM 2. Amend subrule **57.21(4)**, paragraph "**s**," as follows:

s. If there is a dishwashing machine, it must provide a wash temperature of 140°F (60°C) to 160°F (71°C) and a rinse temperature of 170°F (76°C) to 180°F (82°C). ~~The ma-~~

~~chine shall be provided with temperature gauges~~ In a free-standing residential care facility licensed for 15 or fewer beds, a wash and rinse temperature of 140°F (60°C) to 160°F (71°C) shall be acceptable. (III)

ITEM 3. Rescind rule 481—57.22(135C) and adopt in lieu thereof the following **new** rule:

481—57.22(135C) Service plan.

57.22(1) Prior to admission of a resident, the administrator or the administrator's designee shall develop a written and organized orientation plan. The plan shall be designed to assist the resident in adapting to the facility and to assist the facility staff in becoming knowledgeable of the resident and the resident's needs.

57.22(2) Within 30 days of admission, the administrator or the administrator's designee shall, in conjunction with the resident, other facility staff or any organization that works with or serves the resident, develop a written, individualized, and integrated program of ongoing services for the resident.

a. The program shall be planned and implemented to address the resident's priorities and assessed needs, such as living, rehabilitation, activity, behavioral, emotional, mental health and social, and shall take into consideration the resident's personal goals and preferences, including the resident's preferred living situation.

b. The service plan shall include specific goals and objectives with regular documentation of each.

c. The service plan shall be reviewed at least quarterly, or more often as necessary.

57.22(3) Communications related to service plan changes or changes in the resident's condition shall occur within five working days of the change, and shall be conveyed to all individuals inside and outside the residential care facility who work with the resident, as well as to the resident's family members or responsible party.

ITEM 4. Amend rule 481—57.24(135C) as follows:

481—57.24(135C) Care review Resident advocate committee. Each facility shall have a ~~care review~~ *resident advocate* committee in accordance with Iowa Code section 135C.25, which shall operate within the scope of the rules for ~~care review~~ *resident advocate* committees promulgated by the department of elder affairs. (II)

57.24(1) Role of committee in complaint investigations.

a. The department shall notify the facility's ~~care review~~ *resident advocate* committee of a complaint from the public. The department shall not disclose the name of a complainant.

b. The department may refer complaints to the ~~care review~~ *resident advocate* committee for initial evaluation or investigation by the committee pursuant to rules promulgated by the department of elder affairs. Within ten days of completion of the investigation, the committee shall report to the department in writing the results of the evaluation ~~of~~ or the investigation.

c. When the department investigates a complaint, upon conclusion of its investigation, it shall notify the ~~care review~~ *resident advocate* committee and the department of elder affairs of its findings, including any citations and fines issued.

d. Results of all complaint investigations addressed by the ~~care review~~ *resident advocate* committee shall be forwarded to the department within ten days of completion of the investigation.

57.24(2) The ~~care review~~ *resident advocate* committee shall, upon department request, be responsible for monitoring correction of substantiated complaints.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

57.24(3) When requested, names, addresses and telephone numbers of family members shall be given to the ~~care review~~ *resident advocate* committee, unless the family refuses. The facility shall provide a form on which a family member may refuse to have ~~their~~ *the family member's* name, address or telephone number given to the ~~care review~~ *resident advocate* committee.

This rule is intended to implement Iowa Code section 135C.25.

ITEM 5. Amend subrule 57.37(3) as follows:

57.37(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, ~~care review~~ *and resident advocate* committee members, and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

ARC 4206B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 58, "Nursing Facilities," Iowa Administrative Code.

The proposed amendments correct a typographical error in the subparagraph regarding the frequency with which resident progress notes are to be recorded by a nursing facility's activity coordinator and change the name of the "care review committee" to the "resident advocate committee" pursuant to Iowa Code section 135C.25.

The Department has determined that there is no fiscal impact associated with adoption of the proposed amendments. Also, the proposed amendments contain no waiver provision, as they are technical in nature and will not impact any regulated entity.

The proposed amendments were initially reviewed by the State Board of Health at its May 11, 2005, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 28, 2005. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to david.werning@dia.state.ia.us.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subparagraph **58.26(3)"c"(2)** as follows:

(2) Individual resident progress notes recorded at regular intervals (at least ~~every two months~~ *quarterly*). A copy of these notes shall be placed in the resident's clinical record; (III)

ITEM 2. Amend rule 481—58.27(135C) as follows:

481—58.27(135C) ~~Care review~~ *Resident advocate* committee. Each facility shall have a ~~care review~~ *resident advocate* committee in accordance with Iowa Code section 135C.25, which shall operate within the scope of the rules for ~~care review~~ *resident advocate* committees promulgated by the department of elder affairs. (II)

58.27(1) Role of committee in complaint investigation.

a. The department shall notify the facility's ~~care review~~ *resident advocate* committee of a complaint from the public. The department shall not disclose the name of a complainant.

b. The department may refer complaints to the ~~care review~~ *resident advocate* committee for initial evaluation or investigation by the committee pursuant to rules promulgated by the department of elder affairs. Within ten days of completion of the investigation, the committee shall report to the department in writing the results of the evaluation ~~of~~ *or* the investigation.

c. When the department investigates a complaint, upon conclusion of the investigation, it shall notify the ~~care review~~ *resident advocate* committee and the department of elder affairs of its findings, including any citations and fines issued.

d. Results of all complaint investigations addressed by the ~~care review~~ *resident advocate* committee shall be forwarded to the department within ten days of completion of the investigation.

58.27(2) The ~~care review~~ *resident advocate* committee shall, upon department request, be responsible for monitoring correction of substantiated complaints.

58.27(3) When requested, names, addresses and telephone numbers of family members shall be given to the ~~care review~~ *resident advocate* committee, unless the family refuses. The facility shall provide a form on which a family member may refuse to have ~~their~~ *the family member's* name, address or telephone number given to the ~~care review~~ *resident advocate* committee.

This rule is intended to implement Iowa Code section 135C.25.

ITEM 3. Amend subrule 58.41(3) as follows:

58.41(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, ~~care review~~ *and resident advocate* committee members, and the text of Iowa Code section 135C.46; to provide to residents a further course of redress. (II)

ARC 4219B**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 89.14(5) and 89.14(7), the Boiler and Pressure Vessel Board hereby

LABOR SERVICES DIVISION[875](cont'd)

gives Notice of Intended Action to amend Chapter 200, "General," Iowa Administrative Code.

These amendments are intended to update fees charged for enforcement of Iowa Code chapter 89. These amendments are proposed in order to reflect economic changes since this rule was last amended and to provide adequate funding for enforcement of Iowa Code chapter 89.

These amendments will not necessitate combined expenditures exceeding \$100,000 by all political subdivisions or agencies and entities which contract with political subdivisions to provide services.

These amendments do not contain a waiver provision because variances can be sought through the Boiler and Pressure Vessel Board.

If requested no later than June 28, 2005, by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having not less than 25 members, a public hearing will be held on July 6, 2005, at 8:30 a.m. in the Stanley Room, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted no later than June 28, 2005, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to mitchell.mahan@iwd.state.ia.us.

The Division of Labor Services will issue a regulatory analysis as provided by Iowa Code section 17A.4A if a written request is submitted no later than July 10, 2005, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons who each qualify as a small business, or an organization representing at least 25 small businesses.

These amendments are intended to implement Iowa Code chapter 89.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

Amend rule 875—200.4(89) as follows:

875—200.4(89) Fees.

200.4(1) Special inspector certification fee. A \$30 \$40 fee shall be paid annually to the commissioner to obtain a special inspector certification pursuant to Iowa Code section 89.7, subsection 1.

200.4(2) Certificate fee. A \$15 \$25 fee shall be paid for each one-year certificate and a \$25 \$50 fee shall be paid for each two-year certificate.

200.4(3) Fees for inspection. An inspection fee for each object inspected by a division inspector shall be paid by the appropriate party as follows:

- a. A \$20 \$40 fee for each water heater supply boiler.
- b. A \$35 \$80 fee for each boiler, other than a water heater supply boiler, having a working pressure ~~to and including~~ *from 70 pounds per square inch up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.*

~~c. A \$40 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 70 pounds to and including 150 pounds per square inch.~~

~~d. A \$60 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 150 pounds to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.~~

~~e c. A \$100 \$200 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour.~~

~~f d. A \$20 \$40 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure from 15 pounds to and including 70 pounds or more per square inch.~~

~~g. A \$23 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure from 71 pounds to and including 150 pounds per square inch.~~

~~h. A \$25 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure from 150 pounds to and including 450 pounds per square inch.~~

~~i. A \$28 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure in excess of 450 pounds per square inch.~~

~~j e. In addition to the applicable object's inspection fee, if the division cannot follow normal practice of scheduling inspections in a cost-effective manner due to a request by an owner or user for a customized schedule, or due to a failure of any special inspector to comply with applicable laws or rules, travel expenses may be charged at the discretion of the division.~~

~~k f. Inspections and code qualification surveys made by the commissioner at the request of a boiler or tank manufacturer shall be charged at a rate set by the commissioner not to exceed the rate currently charged by the various insurance companies for performing a similar service. This charge shall not void the regular fee for inspection or certification when the boiler or tank is installed.~~

~~l g. If a boiler or pressure vessel has to be reinspected through no fault of the division, there shall be another inspection fee as specified above. However, there shall be no fee charged for the first scheduled reinspection to verify that ordered repairs have been made.~~

~~m. If the division is required to inspect a boiler or pressure vessel due to the failure of a special inspector to comply with any applicable law or rules, the insurance company which employs the special inspector shall be charged \$100 per inspection, plus travel expenses as described in subrule 200.4(3), paragraph "j."~~

200.4(4) Fees for attempted inspections. A \$20 fee shall be charged for each attempt by a division inspector to conduct an inspection which is not completed through no fault of the division.

ARC 4237B**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission gives Notice of Intended Action to rescind Chapter 16, “Public, Commercial, Private Docks and Dock Management Areas,” and to adopt new Chapter 16, “Docks and Other Structures on Public Waters,” Iowa Administrative Code.

The proposed new chapter includes the following changes:

Statements of policy underlying the rules are included in rule 571—16.2(461A,462A).

In rule 571—16.3(461A,462A), standard requirements for all docks are revised, consistent with the policy statements, to specify a minimum offset from adjoining properties and to substitute posting of the 911 address on a dock instead of the owner’s name.

In rules 571—16.5(461A,462A) to 571—16.8(461A,462A), “general permits” for private docks are revised and renewed to continue exempting thousands of owners of private docks from the need for individual permits and payment of fees. A limit of three boat hoists and a total maximum area of 1200 square feet is substituted for the more detailed criteria in the previous general permits. Provisions are added for general permits for “common docks” serving two single-family residences.

Property line offsets for docks and boat hoists are clarified in rules 571—16.2(461A,462A), 571—16.5(461A,462A), 571—16.6(461A,462A), 571—16.12(461A,462A), 571—16.13(461A,462A) and 571—16.15(461A,462A).

In rules 571—16.13(461A,462A) and 571—16.15(461A,462A), notice and public hearing requirements are provided for permitting of proposed multiresidence docks with more than 20 boats and for commercial docks. The notice requirements do not apply to renewals or modifications unless certain thresholds are exceeded by requested permit modifications.

In subrule 16.15(3), commercial docks are not permitted unless commercial dock use would be consistent with zoning of the shoreline property.

In subrule 16.15(4), commercial dock permits for use of state-owned water bodies require that the permittee enter into an agreement to lease the lakebed or riverbed. The lease fees are based on space used for the operation above a threshold area of 1200 square feet. Lease fees are to be phased in, with discounts during the first two years.

In rule 571—16.24(461A,462A), political subdivisions are delegated limited authority to allow docks extending from shoreline property that the subdivisions own or control, but the docks must meet requirements applicable to all regulated docks.

Application fees for individual private dock permits remain \$125 but are payable at the time of application and are nonrefundable unless the application is withdrawn before administrative expense is incurred. Application fees for per-

mits for multiresidence dock complexes and commercial docks are \$250.

Rules for dock management areas administered by the Department include new criteria for establishment of a dock management area, affirming the Department’s intent to maintain existing dock management areas. Procedures and priorities for assigning dock permits in dock management areas are established, giving priority to owners of property in closest proximity to the dock management area. A fee schedule for docks and hoists in dock management areas is included, generally doubling fees that had not been increased for many years. (See rules 571—16.25(461A) through 571—16.31(461A).)

Any interested person may make written suggestions or comments on the proposed rules on or before July 18, 2005. Such written materials should be directed to the Law Enforcement Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the Law Enforcement Bureau offices on the fourth floor of the Wallace State Office Building.

There will be three public hearings as follows:

6 p.m., Thursday, July 7, 2005
Community Room
Clear Lake City Hall
Clear Lake

6 p.m., Monday, July 11, 2005
Gull Point State Park Lodge
West Okoboji Lake

6 p.m., Tuesday, July 12, 2005
Auditorium
Wallace State Office Building
502 E. 9th Street
Des Moines

At the public hearings, persons may present their views either orally or in writing. Persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

Any person who intends to attend a public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of special needs.

These rules are intended to implement Iowa Code sections 461A.4, 461A.25, 462A.27 and 462A.32(2).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Rescind 571—Chapter 16 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 16
DOCKS AND OTHER STRUCTURES
ON PUBLIC WATERS**

571—16.1(461A,462A) Definitions.

“Artificial lake” means all river impoundments and all other impoundments of water to which the public has a right of access from land or from a navigable stream inlet. Examples are Lake Panorama, Lake Delhi, Lake Nashua, and Lake Macbride.

NATURAL RESOURCE COMMISSION[571](cont'd)

“Boat hoist” means a structure placed in the water for storage of boats on or above the water, also referred to as a “lift.”

“Commercial dock” means a dock for which a rental or use fee is charged, directly or indirectly, or a dock that is used as part of a commercial business. A dock maintenance fee charged by a property owners’ association to its members is not a basis to classify a dock as commercial. This definition is not applicable to docks in dock management areas or concession operations administered by the department.

“Commission” means the natural resource commission.

“Common dock” means a single dock shared by separate single-family residences on two adjoining shoreline parcels.

“Department” means the department of natural resources.

“Director” means the director of the department of natural resources or the director’s designee.

“Dock” means a platform-type structure extending from shoreline property over a public water body.

“Dock management area” means an area in the bed of a water body adjoining a state park or recreation area or adjoining a strip of land that was dedicated to the public and is subject to the jurisdiction of the department pursuant to Iowa Code section 461A.11.

“Impoundment” means a body of water formed by constructing a dam across a waterway.

“Multiresidence dock complex” means one or more docks, other than common docks, that serve multiple residences. An example is a dock or complex of docks serving condominium-type units or apartment units or serving multiple single-family residences located on separate residential lots.

“Public dock” means a dock constructed and maintained to provide public access to a water body.

“Public land” means land that is owned by a public body or land that has been dedicated for public access to a public water body.

“Public water body” is a water body to which the public has a right of access for recreational boating and related recreational uses.

“Shoreline property” means a parcel of property adjoining (littoral to) a lake or adjoining (riparian to) a river or other navigable stream.

“Slip” means a mooring space, usually adjacent to a dock.

“Water body” means a natural lake, river, or stream, an impoundment, or an excavated pit.

571—16.2(461A,462A) Purposes and policies; scope and applicability of chapter.

16.2(1) Purposes; policy statements. The purposes of this chapter are to establish rules for the location, size, shape, height, materials, and method of placement of docks, hoists and other structures and their appurtenances to the extent reasonably needed to protect the aquatic ecosystem of public water bodies, public uses of public water bodies, and access rights of owners of adjoining shoreline properties. The rules are based on the following policies:

a. Permits not required for most private docks. These rules should provide continuing exemptions for a large majority of private docks in order to avoid needless regulation and expense.

b. Shoreline property owner’s relative right of access. An owner of property adjoining the shoreline of a public water body has a right of access to use the water body from the owner’s shoreline. That right of access is relative to other public and private rights. Restrictions on that right of access must be reasonably related to the need to protect the water body, the rights of other users, and the rights of owners of adjoining shoreline properties. A reasonable right of access

does not include the right to multiple docks or an unlimited number of boat hoists and boats. It does not include the right to a dock long enough to extend to the water depth desired by the applicant if the necessary dock length would be unreasonable in relation to other uses. It does not include the right to destroy or cause significant damage to aquatic plant populations that are important to the aquatic ecosystem. It does not include the right to interfere with the rights of owners of adjoining shoreline properties.

c. Considering past use in balancing whether to grant variances for nonconforming structures. Most docks, boat hoists, and related structures are periodically removed from the water body. Most docks that are not seasonally removed require replacement after a relatively short useful life. Because of a dock’s lack of permanence relative to other structures, there should be limitations on duration of authorization to maintain a dock with a particular location, size and configuration if changing conditions reasonably require modification. However, when determining whether to grant a variance from permit criteria, the department should consider whether the variance would merely renew authorization for a noncompliant structure that was previously authorized by an individual permit or general permit. If so, the variance should not be denied unless adverse effects of the structure clearly outweigh the hardship caused by requiring that it be modified or removed.

d. Payment of lease fees for exclusive private use of state-owned water bodies. Above a reasonable size threshold, an area of a state-owned water body used exclusively for private commercial purposes should be leased from the state pursuant to Iowa Code section 461A.25.

16.2(2) Water bodies covered. This chapter applies to public water bodies as defined in these rules. Public water bodies included are all natural lakes; all artificial lakes; all rivers; all streams that are large enough to be navigable by canoe or kayak; and all ponds or pits to which the public has a right of access for recreational boating. This chapter does not apply to a water body if its bed and surrounding lands are privately owned and if it is not accessible to the public as a matter of right over land or by navigation through an inlet or outlet. This chapter does not apply to water bodies that are wholly owned by a city or a county conservation board.

16.2(3) Types of structures for which permits are required; exemption for certain docks authorized by Army Corps of Engineers permit or lease. This chapter applies to docks, boat hoists, rafts, buoys, or other platforms anchored to or placed over the bed of a public water body subject to the following exception: On waters under joint jurisdiction of the department and the U.S. Army Corps of Engineers, docks that have appropriate Corps permits or are authorized in leases of federal property are exempt from the requirement of obtaining a dock permit from the department.

16.2(4) Categories of structures and water bodies. These rules are based on the understanding that rules reasonably needed to protect one water body may not be reasonably needed to protect another. These rules establish categories of water bodies and include minimum thresholds that allow continued exemption of a large percentage of private docks from permit requirements. The thresholds vary according to types of water bodies.

16.2(5) Types of permits. Most private docks and associated hoists are eligible for a general permit under 571—16.5(461A,462A) through 571—16.7(461A,462A). Other docks, hoists and rafts, platforms, buoys and other associated structures require individual dock permits under 571—16.12(461A,462A), 571—16.13(461A,462A), 571—

NATURAL RESOURCE COMMISSION[571](cont'd)

16.15(461A,462A) and 571—16.16(461A,462A). Docks in areas adjoining public land and designated as dock management areas require permits under 571—16.26(461A) through 571—16.31(461A). Ski jumps require special event permits issued pursuant to Iowa Code section 462A.16.

16.2(6) DNR docks. The department maintains docks for use by the public and docks for use by DNR personnel for activities such as water patrol. The department does not issue permits to itself for such docks, but the docks are subject to the requirements in 571—16.3(461A,462A). Any person who claims that a DNR dock is adversely affecting a public or private right is encouraged to contact the chief of the department's law enforcement bureau and provide a brief explanation of the nature of the alleged adverse effect of the dock.

571—16.3(461A,462A) Standard requirements for all docks. All docks, except docks specifically exempted by another provision of this chapter, are subject to the following requirements:

16.3(1) Limiting adverse impacts on aquatic ecosystem, public recreational uses and rights of adjoining owners. All docks, hoists and related structures shall be located, sized, configured and constructed to limit their adverse impacts on the aquatic ecosystem, public navigation and other public recreational uses of the water body, and rights of adjoining owners. Generally, a dock and boat hoists should be placed near the center of the frontage of shoreline property to maximize offsets from neighboring properties. In areas of sensitive aquatic habitat, docks and hoists shall be located, configured and constructed to minimize harm to aquatic habitat.

16.3(2) Minimum offset from adjoining property lines. Each dock and hoist shall be offset a minimum of 5 feet from an adjoining property line and shall not extend across the projection of a property line into the lake in a manner that achieves equitable sharing of access to the water body.

16.3(3) Display of information. Each dock owner shall display the 911 address assigned to the property served by the dock. The owner of a dock authorized by individual permit shall also display the dock permit number. The information shall be displayed in block letters and numbers at least 1 inch high in a color contrasting to the background, on the water end of the dock, facing away from shore and plainly visible.

16.3(4) Removal for winter. Each dock must be removed from public waters before December 15 of each year and not reconstructed until the following spring unless the removal requirement is waived by a condition of an individual dock permit or in accordance with 571—16.18(461A,462A).

16.3(5) No enclosure of docks; enclosure of slips and hoists. Private docks and docks in dock management areas shall not be enclosed by roofs or sides. Hoists and slips may be enclosed by roofs and sides constructed of soft-sided natural fiber or synthetic fiber materials for the purpose of protecting watercraft.

16.3(6) Docks in a protected waters area. Special restrictions may be placed on docks that are in a component of a state protected waters area as necessary to protect the natural features of the designated area.

16.3(7) Flotation specifications. All new floating structures authorized by this chapter shall use flotation methods and devices of a type constructed of low-density, closed-cell, rigid plastic foam; high-impact polyethylene fiberglass material; untreated wood timbers; or other inert materials to provide flotation. Use of treated wood is prohibited.

16.3(8) Floating containers. Synthetic (such as plastic or fiberglass) or metal containers not originally manufactured as flotation devices may be used as dock flotation devices if the following conditions are met:

a. All containers must be cleaned of any product residue;
b. All synthetic containers must be sealed and watertight; and

c. All metal containers must be filled with a closed-cell rigid plastic foam and sealed watertight.

16.3(9) Flow of water. All docks shall be constructed and placed in a manner that allows the free flow of water beneath them.

16.3(10) Excavation and fill prohibited. No excavation may be made or fill placed below the ordinary high-water mark of a water body in association with construction of a dock unless excavation or placement of fill is specifically authorized by a construction permit issued under 571—Chapter 13.

16.3(11) Storage, use, and dispensing of fuel. The storage, use, or dispensing of any fuel on a dock on or over public water or adjacent public land shall be in compliance with Iowa Code chapter 101 and the administrative rules that implement Iowa Code chapter 101.

16.3(12) Electrical service. Any electrical service on or leading to any dock used for storage or dispensing of fuel must comply with the 2005 National Electrical Code. All electrical service leading to docks shall include ground fault circuit protection.

571—16.4(461A,462A) Application forms. Reserved.

571—16.5(461A,462A) General permit for certain private docks on natural lakes. This rule constitutes a general permit for certain private docks on natural lakes. This rule is intended to allow the continued exemption of most private docks from the requirement of obtaining an individual dock permit. This general permit expires March 1, 2011. This general permit authorizes annual placement and maintenance of private docks that conform to all of the following criteria:

16.5(1) Dock to serve a residence on a shoreline parcel. The dock shall extend from a shoreline parcel on which one single-family residence is located. The dock shall serve only that single-family residence. However, a "common dock," as defined in these rules, serving residences on two or more shoreline parcels is also eligible for a general permit.

16.5(2) Spacing and offsets from property lines. The dock and each associated hoist shall be offset at least 25 feet from the nearest adjoining property boundary and at least 50 feet from the nearest other lawful dock. If these offsets are impossible due to the narrowness of the frontage on the water body, the dock and each associated hoist shall be located to conform as nearly as reasonably possible to these minimum offsets but no less than 5 feet from the nearest adjoining property line. The dock and each associated hoist must be aligned so as not to cross the projection of the adjoining property line into the lake.

16.5(3) Dimensions, configuration, and maximum area. The dock shall not extend more than 100 feet from the water's edge at normal lake stage. The main section (extending perpendicular to the shoreline) shall not be more than 6 feet wide. The dock shall not be configured to create an enclosed private water space. The maximum area occupied by the dock and hoists shall not exceed 1200 square feet.

16.5(4) Boat hoists. No more than three hoists may be placed in front of a shoreline parcel that is otherwise eligible for a general dock permit. Placement of more than three hoists requires that the owner of the shoreline parcel obtain an individual dock permit.

16.5(5) Other structures. Placement of any other anchored or floating structure, such as a swim raft or mooring buoy, requires that an individual dock permit be obtained.

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16.5(6) Compliance with standard requirements for all docks. The dock and associated hoists must meet the standard requirements in 571—16.3(461A,462A) for all docks.

16.5(7) Exceptions for certain lakes.

a. Clear Lake. Docks that comply with all other general permit requirements may extend up to 150 feet from water's edge as needed to maintain the outer 50 feet of the dock in 3 feet of water. During low water conditions, the department may authorize extensions by posting a public notice specifying the additional length temporarily authorized. The maximum length allowable under any circumstances is 300 feet.

b. Reserved.

571—16.6(461A,462A) General permit for certain private docks on rivers and artificial lakes. This rule constitutes a general permit for certain private docks on rivers and artificial lakes. This general permit expires March 1, 2011. This general permit authorizes maintenance of private docks conforming to all of the following criteria:

16.6(1) Dock to serve a residence on a shoreline parcel. The dock shall extend from a shoreline parcel on which one single-family residence is located. The dock shall serve only that single-family residence. However, a "common dock," as defined in these rules, serving residences on two or more shoreline parcels is also eligible for a general permit.

16.6(2) Spacing and offsets. The dock and each associated hoist shall be offset at least 25 feet from the nearest adjoining property boundary and at least 50 feet from the nearest other lawful dock. If these offsets are impossible due to the narrowness of the frontage on the water body, the dock and each associated hoist shall be located to conform as nearly as reasonably possible to these minimum offsets but no less than 5 feet from the nearest adjoining property line. The dock and each associated hoist must be aligned so as not to cross the projection of the adjoining property line into the river or artificial lake.

16.6(3) Dimensions, configuration and maximum area. The dock shall not extend more than 50 feet or more than one-fourth of the width of the waterway measured from the water's edge at normal water levels. The dock shall not be configured to create an enclosed private water space. The maximum area occupied by the dock and associated hoists shall not exceed 1200 square feet.

16.6(4) Boat hoists. No more than three hoists may be placed in front of a shoreline parcel that is otherwise eligible for a general dock permit. Placement of more than three hoists requires that the owner of the shoreline parcel obtain an individual dock permit.

16.6(5) Other structures. Placement of any other anchored or floating structure, such as a swim raft or mooring buoy, requires that an individual dock permit be obtained.

16.6(6) Anchoring of river docks. All river docks must be securely anchored to prevent them from becoming floating hazards during times of high river flows. The riparian owner is responsible for dock retrieval and removal when reasonably necessary to prevent or remove a navigation hazard.

16.6(7) Compliance with standard requirements for all docks. The dock and associated hoists must meet the standard requirements in 571—16.3(461A,462A) for all docks.

571—16.7(461A,462A) General permit for certain private docks in other specified areas. This rule constitutes a general permit for private docks in certain areas where circumstances, primarily narrowness of the water areas, require different dock hoist configurations. In the following areas, docks that comply with the standard dock requirements in 571—16.3(461A,462A) are eligible for a general permit: canals off West Okoboji Lake and Okoboji Harbor.

571—16.8(461A,462A) General permit for common docks. A "common dock," as defined in these rules, is eligible for a general permit under 571—16.5(461A,462A), 571—16.6(461A,462A) or 571—16.7(461A,462A) if the area occupied by the dock and associated anchored structures, such as hoists and floats or platforms, does not exceed 1800 square feet, there are no more than six hoists, and the dock meets the other requirements of the general permit rule that applies to the water body.

571—16.9 and 16.10 Reserved.

571—16.11(461A,462A) When an individual permit is required.

16.11(1) Docks. An individual permit is required to place or maintain a dock and associated boat hoists on a public water body unless the dock is used for private purposes and is authorized by a general permit in 571—16.5(461A,462A), 571—16.6(461A,462A) or 571—16.7(461A,462A).

16.11(2) Boat hoists. An individual permit is required to place or maintain a boat hoist or other boat storage structure on a public water body unless the structure is authorized by a general or individual dock permit.

16.11(3) Rafts, platforms and buoys. An individual permit is required to place or maintain a raft, platform or buoy on a public water body.

16.11(4) Disputes concerning whether an individual permit is required. If the department's law enforcement bureau determines that an existing dock, boat hoist, raft, platform, buoy or other structure is being maintained without an individual permit required by these rules and notifies the owner of the structure, the owner shall remove, relocate or modify the structure as appropriate, or shall apply for an individual permit to maintain the structure. If the owner fails to respond within a reasonable time, the department may issue a written notice requiring the owner to remove the structure. The notice shall inform the owner of the right to request commencement of a contested case under 571—Chapter 7.

571—16.12(461A,462A) Individual private dock permits—procedures and criteria.

16.12(1) Application form and administrative fee. The applicant for an individual permit for a private dock serving a single-family residence or for a common dock serving two single-family residences on adjoining shoreline parcels shall submit to the department a completed DNR individual private dock application form with payment of an administrative fee of \$125. If the applicant is not the owner of the shoreline property from which the dock extends, the applicant shall identify the relationship between the applicant and each property owner and shall submit a written consent from each owner. The application form shall be accompanied by accurate plans and drawings as specified on the form. The drawings shall accurately show the size and location of each boat hoist, slip, float, platform, buoy, or other structure that will be installed for use in connection with the dock. The completed application form and payment shall be submitted to a DNR conservation officer assigned to the county in which the proposed dock is located.

16.12(2) Criteria for issuing an individual permit for a private dock serving a single-family residence or a common dock serving two single-family residences.

a. In determining whether to issue an individual private dock permit or whether to condition a permit by denying an application in part, the department shall apply the following criteria:

(1) Compliance with standard requirements. The department shall not issue an individual private dock permit for a

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structure that fails to comply with any of the standard requirements in 571—16.3(461A,462A) unless the permit includes an appropriate variance provision.

(2) Size limits. The department shall not issue an individual private dock permit for a dock serving a single-family residence or for a common dock serving two adjoining single-family residences if the dock length, number of hoists, or square feet of space occupied exceeds general permit criteria unless the proposed dock and hoists comply with the offsets required for a general permit and comply with all standard requirements in 571—16.3(461A, 462A). An exception to these requirements may only be made by variance provision in the permit.

b. Variances in individual private dock permits. A variance for failure to meet property line offset requirements may be granted under the following circumstances:

(1) The applicant submits written consent from each owner of adjoining shoreline that is affected by the applicant's failure to meet an offset requirement; or

(2) The applicant submits information supporting a determination that requiring compliance with offset requirements would cause substantial hardship to the applicant in using the applicant's property for riparian access and would cause no more than slight interference with the riparian access of adjoining shoreline owners.

16.12(3) Initial decision and right of appeal. The district law enforcement supervisor shall issue an initial decision in the form of a permit or a permit denial. If the district law enforcement office decides to deny the permit or to issue a permit with specific conditions that deny the application in part, the written decision shall include notice of the applicant's right to request a contested case proceeding under 571—Chapter 7. The department will provide a copy of the permit to other persons who request a copy.

571—16.13(461A,462A) Multiresidence dock permits—procedures and criteria.

16.13(1) Application form and administrative fee. The applicant for a permit for a dock or dock complex serving multiple-family residences shall submit to the department a completed DNR multiresidence dock permit application form with payment of an administrative fee of \$250. If the applicant is not the owner of the shoreline property from which the dock extends, the applicant shall identify the relationship between the applicant and each property owner and shall submit a written consent from each owner. The application form shall be accompanied by accurate plans and drawings as specified on the form. The drawings shall accurately show the size and location of each boat hoist, slip, raft, platform, buoy, or other structure that will be installed for use in connection with the dock. The completed application form and payment shall be submitted to a DNR conservation officer assigned to the county in which the proposed dock is located.

16.13(2) Notice and hearing for multiple docks or dock with more than 20 boat spaces. Before making a determination on an application for a permit authorizing multiple docks or a dock with slips or hoists for more than 20 boats, the department shall schedule a public hearing and locally publish a notice of the hearing not less than 10 nor more than 30 days before the public hearing. The notice shall identify the applicant, the location where the structure is proposed, a general description of the size and configuration of the proposed structure, the number of boat spaces included, and the time and place where the application may be examined. Additionally, the department shall provide written notice to the clerk of the city in which the shoreline property is located or to the

county zoning administrator, as applicable. This requirement does not apply to a permit renewal or modification that would not increase the number or size of docks, slips, hoists or other structures by more than 5 percent, would not reduce the existing offset from an adjoining property, and would not require a variance.

16.13(3) Permit criteria for multiresidence dock complexes.

a. Compliance with standard requirements. The department shall not issue a multiresidence dock complex permit for a dock complex that fails to comply with any of the standard requirements in 571—16.3(461A, 462A) unless the permit includes an appropriate variance provision.

b. Allowable square footage based on frontage. The maximum square footage occupied by the dock(s), slips and hoists shall not exceed 24 square feet per each lineal foot of frontage of the shoreline parcel(s) served by the dock complex.

c. Minimum offsets. The minimum offset from adjoining property lines shall be 5 feet as required in 571—16.3(461A,462A), but the dock(s), associated hoists, and other structures, such as swim rafts and mooring buoys, shall be centered to provide greater offsets unless greater offsets are impossible due to the narrowness of the frontage on the water body.

d. Variances. A variance for failure to meet property line offset requirements may be granted under the following circumstances:

(1) The applicant submits written consent from each owner of adjoining shoreline that is affected by the applicant's failure to meet an offset requirement; or

(2) The applicant submits information supporting a determination that requiring compliance with offset requirements would cause substantial hardship to the applicant in using the applicant's property for riparian access and would cause no more than slight interference with the riparian access of adjoining shoreline owners.

16.13(4) Initial decision and right of appeal. The district law enforcement supervisor shall issue an initial decision in the form of a permit or a permit denial. If the district law enforcement office decides to deny the permit or to issue a permit with specific conditions that deny the application in part, the written decision shall include notice of the applicant's right to request a contested case proceeding under 571—Chapter 7. The department will provide a copy of the permit to other persons who request a copy.

571—16.14 Reserved.

571—16.15(461A,462A) Commercial dock permits—procedures and criteria.

16.15(1) Application form and administrative fee. The applicant for a commercial dock permit shall submit to the department a completed DNR commercial dock permit application form with payment of an administrative fee of \$250. If the applicant is not the owner of the shoreline property from which the dock extends, the applicant shall identify the relationship between the applicant and the property owner and shall submit a written consent from each owner of the property. The applicant shall submit one application for all existing and proposed docks, hoists, slips and related structures in front of the property. The application form shall be accompanied by accurate plans and drawings as specified on the form. The drawings shall accurately show the size and location of each dock, boat hoist, slip, float, platform, buoy, or other structure to be placed and maintained. If the application is other than for renewal of a permit without any modification,

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the application must specifically describe each requested modification. The form and payment shall be submitted to the department's law enforcement headquarters for the district in which the proposed dock is located. The application will be assigned to a conservation officer to investigate.

16.15(2) Notice and hearing procedures. The notice and hearing procedures shall be the same as the procedures in 16.13(2) for private docks with spaces for more than 20 boats. These procedures shall not apply to a permit renewal that would not increase the number or size of docks, slips, hoists or other structures by more than 5 percent, would not reduce the existing offset from an adjoining property, and would not require a variance.

16.15(3) Criteria. In determining whether to issue a commercial dock permit or whether to condition a permit by denying an application in part, the department shall apply the following criteria:

a. Compliance with standard requirements. The department shall not issue a permit for a proposal that fails to comply with any of the standard requirements in 571—16.3(461A, 462A) unless the permit includes an appropriate variance provision.

b. Limiting area of docks and hoists to minimize boat traffic. The 5-foot offset from adjoining property lines in the standard requirements for all docks is considered a minimum for optimum conditions. Greater offsets may be required if reasonably needed to minimize boat traffic and congestion in front of other shoreline property not owned or controlled by the applicant.

c. Consistency with zoning of shoreline property. Commercial use of a dock must be consistent with zoning of the shoreline. A permit for a commercial dock will not be issued if the commercial dock is inconsistent with the zoning of the shoreline property by the city or county that has authority to zone the shoreline property from which the dock extends.

d. Restrictions on roofs or sides. Authorization for roofs or sides on docks or slips may be restricted as reasonably needed to minimize adverse visual impact on owners of other property and the public.

16.15(4) Leases applicable to commercial docks on state-owned water bodies. Each commercial dock permit issued after March 1, 2006, shall be conditioned on the requirement that the permittee obtain a lease for private use of a state-owned riverbed or lakebed pursuant to Iowa Code section 461A.25 and 571—Chapter 18. The leased property shall be identified in the permit and shall consist of all square footage in excess of 1200 square feet within an envelope that includes all docks, hoists, slips, other structures, and the water area that is used for commercial purposes to the extent that the water area is not reasonably available for other uses. The permit shall include recommendation of a three-year phase-in of the annual lease fee, with two-thirds of the annual fee waived in the first year, one-third waived in the second year, and the full fee imposed in the third and succeeding years.

571—16.16(461A,462A) Noncommercial public dock permits—procedures and criteria. The procedures and criteria in 571—16.15(461A,462A) shall be applicable to noncommercial public docks except that a lease shall not be required as a condition of a permit for a noncommercial public dock.

571—16.17(461A,462A) Duration and transferability of permits; refund of application fees; suspension, modification, or revocation of permits; complaint investigation; property line location.

16.17(1) Duration and transferability of dock permits; administrative fee refunds. Each dock permit shall be issued for a term of five years unless a shorter term is reasonably needed due to particular circumstances. The administrative fee paid with an application is nonrefundable unless the application is withdrawn before the department incurs administrative expense in investigating the application. A dock permit is not automatically transferable to a new owner of the shoreline property. A purchaser of shoreline property who acquires an existing permitted dock in the real estate transaction may request approval from the department for transfer of the permit.

16.17(2) Suspension, modification, or revocation of permits.

a. An individual dock permit or the applicability of a general permit to a specific dock may be modified, suspended, or revoked, in whole or in part, by written notice, if the director determines that the dock is not safe, that a violation of any terms or conditions of the permit has occurred, or that continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation; the reasons for the action; and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance.

b. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may request a hearing in order to present information demonstrating that the alleged violation did not occur or that required corrective and preventative measures have been taken or to present any other information relevant to a decision as to whether the permit should be reinstated, modified, or revoked. The hearing shall be conducted as prescribed by 571—Chapter 7. After completion of the hearing, a final decision will be made concerning the status of the permit. In the event that no hearing is requested, notices of modification and revocation shall remain in effect and suspended permits shall be reinstated, modified, or revoked.

16.17(3) Investigation of complaints. Any person adversely affected by an individual dock permit or the applicability of a general permit to a specific dock may request, in writing, an investigation and a hearing to reconsider the permit. Requests for hearings shall specify adverse effects on the complainant and shall be made in accordance with procedures described in 571—Chapter 7.

16.17(4) Determining property boundaries. An applicant for a permit, a permittee, and an owner of shoreline property adjoining property of an applicant or permittee are responsible for determining the accurate location of common boundaries of their respective properties.

571—16.18(461A,462A) Exemptions from winter removal requirement.

16.18(1) Policy. This rule provides for exemptions from the general requirement in Iowa Code section 462A.27 that nonpermanent structures be removed on or before December 15 of each year. It is important that docks and other structures subject to destruction or damage by ice be removed. Generally, ice damage is greatest on Iowa's natural lakes. Where a dock may be left in ice without damage to the dock, it is important that it have reflective material visible to operators of snowmobiles or other motorized machines lawfully operated on the frozen surface of the water body.

16.18(2) Water bodies other than natural lakes. A dock on a water body other than a natural lake is exempted by this rule from the winter removal requirement if the dock has reflect-

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tive material visible to operators of snowmobiles or other motorized machines lawfully operated on the frozen surface of the water body.

16.18(3) Docks on natural lakes. Docks on natural lakes must be removed by December 15 of each year unless they have the required reflective materials and they are specifically exempted by a condition of an individual dock permit or located in one of the areas listed as follows:

- a. Upper Gar Lake.
- b. Canals off West Okoboji Lake.
- c. Okoboji Harbor.
- d. Lazy Lagoon portion of Triboji dock management area.
- e. Smith's Bay on West Okoboji Lake.
- f. Templar Park on Big Spirit Lake.
- g. Venetian Canal and Harborage Inlet on Clear Lake.
- h. Casino Bay of Storm Lake.
- i. Canals off Lake Manawa and Carter Lake.

571—16.19(461A,462A) General conditions of all dock permits. All dock permits, unless specifically excepted by another provision of this chapter, shall include the following conditions of approval:

16.19(1) Compliance with permit. All activities and structures authorized by a dock permit must comply with the requirements of the permit, and the permittee shall maintain the structure or work authorized by the permit.

16.19(2) Permit limitations. A dock permit shall not be construed to do more than give the permittee the right to construct a dock. The permit creates no interests, personal or real, in the real estate below the ordinary high-water mark nor does it relieve the requirement to obtain federal or local assent when required by law for such activity.

16.19(3) Permit valid only while permittee controls adjoining shoreline. An individual permit shall be valid only while the permittee has the necessary permissions to use the adjoining shoreline parcel from which the dock projects.

16.19(4) Consent to inspect. The permit is the permittee's consent allowing representatives of the department to inspect the permitted structures as reasonably needed to determine whether the permittee provided accurate information and whether the structures were placed and maintained consistent with the authorization in the permit and these rules.

16.19(5) No interference with other uses of the water body. The permit does not authorize the permittee to prevent the public from using those parts of the water body adjacent to the permitted structure.

16.19(6) No fee charged by permittee. A permittee shall not charge a fee for use of a dock or associated structure unless the permit is for a commercial dock or a fee is expressly authorized by the permit.

571—16.20(461A,462A) Permit criteria for rafts, platforms, buoys, or other structures.

16.20(1) Rafts, platforms or buoys serving private shoreline property. A raft, platform or buoy maintained in front of a privately owned shoreline parcel for private use requires authorization in an individual dock permit or multiresidence dock permit. The raft, platform or buoy shall not be placed more than 250 feet from the shoreline, shall be equipped with reflectors visible from approaching boats, and shall not be larger than 100 square feet unless a larger size is justified and authorized by a variance condition of an individual dock permit.

16.20(2) Rafts, platforms or buoys for commercial or noncommercial public use. A raft, platform or buoy maintained for commercial or noncommercial public use requires

authorization in a commercial dock permit or noncommercial public dock permit. The raft, platform or buoy shall not be placed more than 250 feet from the shoreline, shall be equipped with reflectors visible from approaching boats, and shall not be larger than 150 square feet unless a larger size is justified and authorized by a variance condition of a dock permit.

571—16.21 to 16.23 Reserved.

571—16.24(461A,462A) Docks permitted by political subdivisions that own or otherwise control shoreline property. This rule delegates to a political subdivision authority to permit docks extending from shoreline property that it owns or shoreline property that was dedicated to the public and is controlled by the political subdivision. This delegation is subject to the condition that the docks shall comply with the standard requirements in 571—16.3(461A,462A). The political subdivision authorizing maintenance of a dock shall be responsible for enforcing the standard requirements. The department reserves authority to determine whether the requirements of 571—16.3(461A,462A) are met upon complaint of a person who claims that public or private rights are adversely affected by a permitted dock. In a circumstance where shoreline property is public land but there is uncertainty concerning the relative authority of a local political subdivision and the department over the public land, any permits for docks extending from the public land shall be issued pursuant to an interagency agreement between the local political subdivision and the department.

571—16.25(461A) Establishment of dock management areas and criteria for designation.

16.25(1) Establishment of dock management areas. Where public land under the jurisdiction of the commission adjoins the ordinary high-water mark of a public water body, the director may designate the area as a dock management area. Docks in a dock management area are public docks. However, the dock permittees have priority use of the docks. The docks may be used by the public for fishing and emergency mooring when such use does not interfere with a permittee's use. Other uses allowed by the permittee shall be the responsibility of the permittee. The department desires to maintain all existing dock management areas with no expansion and no additions of new dock management areas.

16.25(2) Criteria for dock management area designation. In designating an area as a dock management area, the director shall apply the following criteria:

- a. The shoreline in question shall be public land and shall have been developed and managed for recreational access to water.
- b. The establishment of a dock management area shall not adversely affect other public recreational use of the water.
- c. The placement of docks shall not be inconsistent with the overall appearance and use of the public land and water.
- d. Dock management areas shall not be established in areas where depth or bottom configurations are incompatible with the placement of docks.
- e. Dock management areas shall not be established where fish and wildlife habitat or other natural resources or scenic features would be disturbed by the presence of docks.
- f. Dock management areas in existence as of January 1, 2006, shall be considered to have met the above criteria, and all dock management areas designated after January 1, 2006, must meet the above criteria.

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571—16.26(461A) Procedures and policies for issuance of dock management area permits.

16.26(1) Availability of dock sites. Following designation of a dock management area by the director, the department shall issue public notice of the availability of dock sites. Individual dock sites shall be designated by the director.

16.26(2) Application process for dock permit. Interested persons must submit an application for a dock permit. Only one application shall be submitted for all permittees on a dock site. The method of applying for a dock permit and the procedures for selecting permittees shall be announced in the public notice.

16.26(3) Selection of dock permittees. Dock site permits shall be available to all members of the public through a selection process. Selection shall be based on the following priority, and a waiting list shall be established that follows the same priority:

- a. Owners of property adjoining or immediately across a street from the public land.
- b. Owners of nonadjoining property within the housing association or subdivision adjoining or immediately across a street from the public land.
- c. All other residents of the state of Iowa.
- d. All other nonresidents.

571—16.27(461A) Standard requirements for dock management area docks. Any dock authorized or installed on or before June 1, 2005, and currently maintained in a dock management area, shall be considered to have met all requirements of this rule until a change in ownership, modification of the dock, or dock replacement or until expiration of the permit, whichever occurs first.

16.27(1) Occupancy of docks.

a. Minimum occupancy. A minimum of two single-family residences selected in accordance with 571—16.26(461A) shall share a single dock.

b. Maximum occupancy. A maximum of four single-family residences selected in accordance with 571—16.26(461A) shall share a single dock. Authorization of more than two single-family residences shall be at the discretion of the department.

16.27(2) Spacing and alignment. Dock sites shall be at least 50 feet apart.

16.27(3) Dimensions.

a. Length. The total length of the dock shall not exceed 100 feet measured from the ordinary high-water mark of the lake as determined by the department.

b. Width. Docks shall be at least 4 feet wide and no more than 6 feet wide.

16.27(4) Configuration.

a. "L" or "T." The total length of the "L" or "T" portion facing the water shall not be greater than 16 feet, and the total area of the "L" or "T" shall not exceed 168 square feet.

b. Catwalks. Catwalks shall be at least 2 feet wide and considered as part of the dock. Catwalks shall be limited in length as in an "L" or "T" portion of the dock construction and shall not extend beyond the width of the hoist.

c. Hoists. A hoist or other boat storage structure shall not be placed adjacent to any segment more than 6 feet wide and shall not exceed 10 feet in width. All hoists shall be marked with an identification sticker provided by the department.

16.27(5) Exceptions for certain dock management areas.

a. Artificially constructed lagoon or harbor areas. In artificially constructed lagoon or harbor areas, the configuration and dimensions of the docks, catwalks and hoists shall be determined by the department on an individual basis tak-

ing into consideration the physical characteristics of the area, the mooring pattern of boats, and public safety. A minimum of one and a maximum of two single-family residences selected in accordance with 571—16.26(461A) shall share a single dock site.

b. Lake Macbride multiresidence docks, Clear Lake Harbourage dock and Lake Odessa dock management area. The occupancy and the configuration and dimensions of the docks, catwalks and hoists shall be determined by the department on an individual basis taking into consideration the physical characteristics of the area, the mooring pattern of boats, and public safety.

16.27(6) Display of dock management area sign. Each individual dock site shall be marked with a sign provided by the department, and the end of the dock facing the water shall be marked with the dock number as assigned by the department.

16.27(7) Other requirements for docks in a dock management area. Standard requirements in 571—16.3(461A, 462A) shall apply to all docks in a dock management area except requirements relating to property line offsets and display of information.

571—16.28(461A) Dock management area permit restrictions and conditions. The following conditions and restrictions shall apply to docks in a dock management area.

16.28(1) Use of dock for mooring. Only the persons named as permittees shall have use of the dock for mooring. All vessels must be registered to the permittees and listed on the dock management area permit.

16.28(2) Equitable sharing of dock costs. Permittees shall agree on the equitable sharing of the cost of construction, installation, maintenance and removal of the dock and any other components to the dock.

16.28(3) Number of assignments allowed. Only one dock assignment may be allocated to a single-family residence.

16.28(4) Number of hoists allowed. Permittees shall each be allowed up to a maximum of two hoists per residence.

16.28(5) Nontransferability of dock permits and privileges. Dock permits and privileges shall not be transferred, assigned or conveyed by the permittee to any other person.

16.28(6) Liability insurance. Prior to constructing a dock, each permittee shall provide proof of current liability insurance in the amount of \$1 million and naming the department as an insured party.

16.28(7) Failure to construct or place a dock; failure to remove dock materials from shoreline. Any permittee who has failed to construct and place a dock or to remove all dock materials and hoists from the shoreline by June 1 of each year or has failed to seek permission from the department for an extension of that date shall be considered to have relinquished the permit, and the department shall reassign the permit to the next available applicant. Any remaining dock materials or hoists shall be removed by the department after June 1 at the permittee's expense.

16.28(8) Winter storage of docks, catwalks and hoists on public property. Winter storage of docks, catwalks and hoists on public property shall be allowed only where there is enough land and the storage of items does not interfere with the public's use of the area. Storage of only the docks, catwalks and hoists assigned to that dock management area shall be allowed. Any docks, catwalks or hoists placed on public land not assigned to that area shall be removed by the department at the permittee's expense.

16.28(9) Land use restrictions. Nothing shall be constructed or placed on public land adjacent to any dock in a dock management area unless the construction or placement is a necessary appurtenance to the dock as determined by the

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director.

16.28(10) Expiration of permits. The term of a dock management area permit shall not exceed five years. A renewal shall be requested on the same form as an original permit.

16.28(11) Other permit restrictions and conditions. All restrictions and conditions found in 571—16.19(461A, 462A), except 16.19(3), shall apply to all docks in a dock management area.

571—16.29(461A) Fees for docks in dock management areas. Payment of the annual fee shall be made upon application and may be paid in a lump sum in advance for the term of the permit. Failure to pay the annual fee by April 1 of any year may result in revocation or cancellation of the permit. Payment of any dock management area fee shall be made to the department of natural resources.

	Dock Fee	Hoist Fee
Beed's Lake	\$100	\$ 50
Black Hawk Lake/Denison	\$200	\$ 50
Black Hawk Lake Marina	\$200	\$ 50
Black Hawk North Shore	\$200	\$ 50
Blue Lake	\$100	\$ 50
Clear Lake Harbourage	\$	\$250 – hoist or slip fee
Clear Lake North Shore	\$150	\$ 50
Clear Lake Ventura Heights	\$150	\$ 50
East Okoboji Beach	\$150	\$ 50
Lake Macbride Lakecrest	\$600	\$100 – slip fee
Lake Macbride The Pines	\$600	\$100 – slip fee
Lake Odessa	\$100	\$ 25
Lower Pine Lake	\$100	\$ 50
Pillsbury Point	\$200	\$ 50
Rice Lake	\$100	\$ 50
Triboji Lakeshore	\$250	\$ 50
Triboji Lazy Lagoon	\$200	\$ 50
Union Grove	\$100	\$ 50

571—16.30(461A) Suspension, modification or revocation of dock management area permits. A dock management area permit may be modified, suspended, or revoked, in whole or in part, by written notice, if the director determines that the dock is not safe, that a violation of any terms or conditions of the permit or these rules has occurred, or that continuation of the permit is not in the public interest. Such modification, suspension, or revocation shall become effective upon the date specified in the notice. The notice shall state the extent of the modification, suspension, or revocation, the reasons for the action, and any corrective or preventative measures to be taken by the permittee to bring the dock, structure, or activity into compliance. Within 30 days following receipt of the notice of a revocation or modification, or during the course of a suspension, the permittee may request a hearing in order to present information demonstrating that the alleged violation did not occur or that required corrective and preventative measures have been taken or to present any other information relevant to a decision as to whether the permit should be reinstated, modified, or revoked. The hearing shall be conducted as prescribed by 571—Chapter 7. After completion of the hearing, a final decision will be made concerning the status of the permit. In the event that no hearing is requested, notices of modification and revocation shall remain in effect and suspended permits shall be reinstated, modified, or revoked.

571—16.31(461A) Persons affected—hearing request.

Any person adversely affected by a dock management area permit may request, in writing, a hearing to reconsider the permit. A request for hearing shall show cause and shall be made in accordance with procedures described in 571—Chapter 7.

These rules are intended to implement Iowa Code sections 461A.4, 461A.25, 461A.27 and 461A.32(2).

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COMMISSION[571]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission gives Notice of Intended Action to rescind Chapter 17, “Barge Fleeting Regulations,” Iowa Administrative Code, and adopt new Chapter 17 with the same title.

This new chapter clarifies application and appeal procedures, barge fleeting operation standards, and restrictions and prohibitions on locating fleeting areas and provides necessary definitions. Procedures for determining lease fees are substantially revised, new lease fees are established, and future fee adjustment is provided for.

Any interested person may make written suggestions or comments on the proposed rules on or before June 29, 2005. Such written materials should be directed to Gregory Jones, Realty Services Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6629. Persons who wish to convey their views orally should contact the Realty Services Bureau at (515)281-5806 or at the Realty Services Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on June 30, 2005, at 10:30 a.m. in the Fourth Floor East Conference Room, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of special needs.

These rules are intended to implement Iowa Code sections 461A.4, 461A.11, 461A.18, and 461A.25.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 571—Chapter 17 and adopt the following **new** chapter in lieu thereof:

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CHAPTER 17
BARGE FLEETING REGULATIONS

571—17.1(461A) Purpose. The purpose of these rules is to regulate the practice of barge fleeting in order to protect public and private rights and interest in public waters of the state of Iowa under the jurisdiction of the commission; to protect public health, safety and welfare; and to protect fish and wildlife habitat.

571—17.2(461A) Policy. The policy of the natural resource commission is to recommend that the executive council of Iowa lease strategically located barge fleeting facilities on the public waters of the state of Iowa under the jurisdiction of the commission in a manner consistent with the state's role as trustee of its waters.

571—17.3(461A) Applicability. This chapter is applicable to all public waters under the jurisdiction of the commission except that portion of the Mississippi River conveyed to certain cities by chapter 249, Acts of the Fifty-first General Assembly; chapter 299, Acts of the Fifty-ninth General Assembly; or Special Charters enacted by the legislature in 1856 and 1857. This chapter regulates the use of those waters for barge fleeting, including the installation of structures, physical site modification such as dredging, and operation of fleeting equipment and maneuvering of barges within the fleet.

571—17.4(461A) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Commission" means the natural resource commission.

"Deadman" means an anchor buried in the upland adjacent to a fleeting area.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or the director's designee.

"Dolphins" means a closely grouped cluster of piles driven into the bed of a waterway and tied together so the group acts as a unit to withstand lateral forces from vessels or other floating objects.

"Fleeting area" means an area within defined boundaries used to provide barge mooring service and to accommodate ancillary harbor towing under care of a fleet operator. The term does not include momentary anchoring or tying off of tows in transit and under care of the line haul towboat.

"Lease" means a lease as authorized under Iowa Code section 461A.25 for the purpose of authorizing a fleeting area.

"Mooring barge" means a barge held in place by anchors or spuds and used to moor other barges during their stay in the fleeting area.

"Mooring cell" means a sheet pile structure, usually filled with earth, stone or concrete, and used to hold barges or other vessels in place.

"Operator" means any person who operates a barge fleeting area.

"Person" means any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, municipality, cooperative, estate, trust, receiver, executor, administrator, fiduciary and any representative appointed by order of any court or otherwise acting on behalf of others.

"Riparian rights" means the legal rights that assure the owner of land abutting a stream or lake access to or use of the water.

571—17.5(461A) Barge fleeting leases. A person shall not assert any exclusive privilege to conduct barge fleeting and mooring service for hire, or not for hire, and shall not prevent

or obstruct any lawful use of navigable waters under the jurisdiction of the commission except within a fleeting area leased by the executive council of Iowa or at a loading or offloading facility necessary to carry on commerce, provided the facility is constructed in compliance with Iowa department of transportation, U.S. Army Corps of Engineers, and all other applicable permits and regulations.

571—17.6(461A) Restricted areas. Leases shall not be issued for a fleeting area in the following locations unless the department determines there is a compelling reason for fleeting in such an area.

17.6(1) A site subject to unusual hazards including but not limited to high wind, strong current, violent ice movement, and hydraulic surges during the time fleeting operations are proposed to be carried out.

17.6(2) A site receiving high use for recreation, sport fishing, or commercial fishing unless the fleeting area can be placed or structured to be compatible with such uses.

17.6(3) A site immediately adjacent to industries or other facilities, which, together with fleeting operations, present a substantial risk of fire, explosion, water pollution, or other serious safety hazards.

17.6(4) A site where fleeting area activities would restrict or interfere with or have a substantial adverse effect on the use and enjoyment of an area owned by federal, state, or local government, including but not limited to public parks, game refuges, forests, or recreation areas used for access to docks, slips, harbors, marinas, boat launching ramps or unique biological or physical features of the river valley itself.

17.6(5) A site immediately adjacent to or over a dam, sill, lock, breakwater, revetment, navigation aid, or wing dam.

17.6(6) A site within established navigation channels for commercial or recreational vessels.

17.6(7) A site within the approach area for a lock portion of a dam structure.

17.6(8) A site adjacent to bridges or vessel approach areas to bridges.

571—17.7(461A) Prohibited areas. Leases shall not be issued for a fleeting area in the following locations:

17.7(1) A site that will have a substantial adverse effect on fish or wildlife (mussels, fish spawning, waterfowl, or fur-bearer) habitat due to dredging, propeller wash or other activity related to fleeting.

17.7(2) A site that would have an adverse impact on documented threatened and endangered species.

17.7(3) A site adjacent to national monuments or registered landmarks.

571—17.8(461A) Riparian rights. A fleeting area shall not be leased in any location that would interfere with the rights and privileges of the riparian property owner except with written permission of the riparian property owner or lack of response to the notice provided for in 17.10(2)"f."

571—17.9(461A) Standards. The following standards shall apply to operation of fleeting areas:

17.9(1) A fleeting lease shall be construed to do no more than give the operator the right to designate and improve an area to be utilized for fleeting. The lease creates no interest, personal or real, in the real estate below the ordinary high water line except as provided in the lease.

17.9(2) Improvements in fleeting areas shall be limited to items such as construction of dolphins, mooring cells, deadmen, mooring barge anchors, and other similar methods of ensuring retention of barges if approved by the department. Improvements shall be constructed in a manner consistent

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with engineering standards of the U.S. Army Corps of Engineers.

17.9(3) Fleeting activities within leased fleeting areas shall be limited to barge mooring service, ancillary harbor towing and minor barge repair or servicing. No washing or cleaning of barges is permitted, unless conducted in compliance with the requirements of Iowa Code chapter 455B; the washing activities will not have a substantial adverse effect on fish or wildlife (mussels, fish spawning, waterfowl, or furbearer) habitat; and the department specifically approves the cleaning activity.

17.9(4) Barges shall not be moored to trees or other natural features of an area except with the approval of the riparian property owner or during an emergency.

17.9(5) Barge fleeting shall be conducted in a manner that minimizes bank erosion attributable to the fleeting operation.

17.9(6) Leased fleeting areas may be used for navigation and recreational pursuits such as boating and fishing only to the extent that such use does not interfere with fleeting activities. Other waterway users shall not obstruct barge fleeting activities within leased fleeting areas.

17.9(7) The right of entry of barges into a fleeting area may be refused by:

- a. The operator.
- b. The department, after conferring with the operator, when there is an imminent hazard to the public interest, or to public health, safety or welfare.

17.9(8) The operator shall, at all times, be responsible for the safety and security of the barges in the fleeting area and shall take reasonable precautions to eliminate hazards to boaters or other persons in the fleeting area.

17.9(9) Lights or other warning devices as required by state and federal navigation regulations shall mark moored or floated barges.

17.9(10) The operator shall notify the department of the current name, address, and day and evening telephone numbers of the individual directly responsible for supervising the fleeting area who is to be notified in case of emergency.

17.9(11) A lease issued under this chapter may not be exercised until all other necessary permits or approvals have been issued by local, state or federal agencies having jurisdiction over the lease area.

17.9(12) All structures and devices shall be removed by the operator upon the expiration of a lease unless the department determines some structures and devices must remain in place to correct existing problems or to prevent future problems that could cause environmental damage.

571—17.10(461A) Application. An applicant for a lease, or a renewal of a lease, shall submit an application to the department on forms provided by the department.

17.10(1) Applicant. An applicant for a lease must be a person and an operator as defined in these rules.

17.10(2) Content of application. The following shall be included in the application:

- a. A fee of \$500 for the cost of review of the lease application for a previously unleased site. Prior to issuance of a lease, the applicant shall pay the department an additional \$500 fee for administration of the lease.
- b. A fee of \$1,000 for the cost of review, issuance and administration of a renewal lease.
- c. Applicant name, address, telephone number, state of incorporation (if applicable) and whether the application is for a new lease or renewal.
- d. A map extending at least one-half mile upstream and downstream from the proposed fleeting area showing the location of the proposed fleeting area by section, township,

range, county and river mile and by major identifiable features in the immediate area such as locks and dams, incorporated areas, roads, bridges, and county lines. The map shall indicate designated fish and wildlife areas and refuges; existing recreational areas; historical, archeological and cultural sites, if known; residential housing locations; and existing adjacent water or shoreland uses which, together with fleeting operations, would present an unusual risk of fire, explosion, collision, contamination or other serious safety hazards. The map shall also show the following navigation-related features:

- (1) Docks.
- (2) Landings.
- (3) Harbors.
- (4) Marinas.
- (5) Dikes.
- (6) Revetments.
- (7) Islands.
- (8) Navigation or warning lights.
- (9) Wing dams.
- (10) Submerged cable and pipeline crossings.
- (11) Overhead power and utility lines.

e. Name, address, and telephone number of each riparian property owner adjacent to the fleeting area.

f. Proof that the applicant has riparian property rights on the navigable waterway adjacent to the entire area of the proposed fleeting area. Proof may include fee simple title, a lease of riparian or mooring rights from the riparian property owner, or written permission from the riparian property owner. In lieu of written permission, the applicant shall certify that the applicant has notified the riparian property owners of the proposed establishment of a fleeting area. Notification to riparian property owners shall be on forms furnished by the department and sent by certified mail. The riparian property owner shall respond to the department in writing within 30 days of receipt of notice if the riparian property owner objects to the issuance of a lease. The riparian property owner shall state the basis for objection in the response. The department shall consider the effects of lease issuance on the riparian property owner's rights. The department shall be notified by the operator of any action to terminate a lease or written permission.

g. A drawing of the proposed fleeting area which contains the following: plan view and cross sections to show existing pertinent topographic and hydrographic features; referenced government datum plane; scale, both vertical and horizontal (not smaller than 1" = 400' horizontal); north arrow; river current directions; property lines and adjacent property owners by name; proposed features including dolphins, anchors, deadmen, mooring barges, mooring cells and buoys, and other devices; mooring facility size and configuration; the maximum number and size of barges to be moored; and routes used by any tow entering or leaving the fleeting area.

h. Documentation of the need for the size, capacity, and location of the fleeting area for which a lease is requested.

i. A list of alternate sites considered and a statement of the reasons the requested site is preferred.

j. Signature of applicant or authorized agent.

571—17.11(461A) Application review and approval.

17.11(1) Review of application. Upon receipt of an application that complies with the requirements of 17.10(461A), the department will review the application to determine whether the application complies with applicable criteria in these rules. In order to determine such compliance, the applicant may be required, at the applicant's expense, to

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provide the department with anchor design criteria, underwater surveys and dives necessary to determine compliance.

17.11(2) Notice of application. Upon determination that an application complies with applicable criteria in these rules, the department staff shall give notice of receipt of the application as follows:

a. Publication of notice. The department shall publish one notice in a newspaper as defined in Iowa Code section 618.3 published in the county where the proposed fleeting area is located or in an adjacent county. The newspaper shall be of general circulation in the vicinity of the proposed fleeting area site. The notice shall briefly describe the location and nature of the proposed fleeting area, identify the department rules which are pertinent to the application, state whether the application is a new lease or renewal, and provide that a hearing will be scheduled if the director determines that there is a material issue concerning whether the application complies with applicable criteria in these rules. The notice shall allow interested persons 30 days from the date of publication to submit comments or a request for hearing, and shall state that a request for hearing must be supported by documentation of potential adverse effects of the proposed fleeting facility on an affected or aggrieved person.

b. Notification of governmental bodies and interested persons. The notice as prepared for publication shall also be sent by first-class ordinary mail or an equivalent method of service to the directors of the Iowa department of transportation, Iowa department of economic development, the Iowa secretary of agriculture, the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Coast Guard, natural resources and transportation management agencies of the adjacent state, and to any person who has requested in writing that the person's name be placed on a mailing list for notification of barge fleeting facility applications adjacent to a designated county or counties. The mailing list will be updated at the beginning of every other calendar year.

17.11(3) Lease approval. If the director determines that there is not a material issue concerning whether the application complies with applicable criteria in these rules, the lease will be presented to the commission to obtain the commission's recommendation for approval to the executive council of Iowa. Final approval of the lease shall be by the executive council.

571—17.12(461A) Lease fee. The annual lease fee in dollars to be paid by the operator to the department shall be based on the dimensions of the area to be used as a fleeting area. The fee shall be determined as follows:

1. For each year included under leases issued prior to January 1, 2007, \$3.18 per each 100 square feet or fraction thereof.

2. Effective under leases issued on and after January 1, 2007, each subsequent January 1, the fee per 100 square feet shall be adjusted on a cumulative basis, by the percentage of the Consumer Price Index for the Midwest Urban Region, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the previous one-year period.

571—17.13(461A) Renewals. The operator shall request renewal of the lease not more than nine or less than six months prior to its expiration. The application fee as provided in 17.10(2)"b" must accompany the request. A lease shall remain in force during the processing of an application for renewal, including any appeals process, provided that the application for renewal was made not less than six months before expiration of the lease. Failure to request renewal shall terminate the operator's rights to the fleeting area.

571—17.14(461A) Disputes concerning leases. Contested case procedures are not applicable to disputes concerning leases under this chapter, except as set forth in 17.15(461A) and 17.16(461A). A commission decision whether or not to recommend a lease or a particular condition of a lease is final agency action, subject to the right of an applicant or other affected person to file with the director a written request for reconsideration by the commission. The director must receive the request for reconsideration within 30 days after the commission's decision on a proposed lease. A commission decision to recommend a lease will be forwarded to the executive council of Iowa for approval after 30 days following the commission's decision unless the director has been notified of a written request for reconsideration or the filing of a petition for judicial review of the commission's recommendation.

571—17.15(461A) Lease revocation. A lease may be revoked upon determination that operation of the facility is in violation of a condition of the lease. Revocation proceedings shall be in compliance with Iowa Code chapter 17A and 571—Chapter 7.

571—17.16(461A) Nonuse. Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter within a period of two years from the issuance of the lease shall render the lease null and void unless extended by the department. Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter for any period of two consecutive years shall create a rebuttable presumption that the operator intends to abandon and forfeit the lease and shall be cause for a review of the lease by the department. The operator may request a contested case proceeding in accordance with Iowa Code chapter 17A and 571—Chapter 7.

These rules are intended to implement Iowa Code sections 461A.4, 461A.18, 461A.25, and 462A.32.

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission gives Notice of Intended Action to rescind Chapter 18, "Rental Fee Schedule for State-Owned Property, Riverbed, Lakebed, and Waterfront Lands," and adopt new Chapter 18, "Leases of State-Owned or Dedicated Public Property," Iowa Administrative Code.

Historically, Chapter 18 has consisted of commercial and noncommercial fee schedules based on square footage of the leased area. The existing fee schedules do not take into account any value differences that depend on location. The existing rules include an alternative formula for valuing commercial leases. The Department has not used the alternative formula.

This proposed amendment establishes new procedures for determining lease fees derived from the assessed value of the

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adjoining private property, the size of the leased area, the limited market for the lease and similar relevant factors. In addition, the purpose, scope and applicability of the rules are clarified, and application and appeal procedures are clarified. A one-time license alternative is provided for minimal encroachments.

This amendment would result in substantial increases in some lease fees. The rules reserve the authority of the Commission to phase in fee increases by applying discounts to the fees for the first and second years of a lease when consistent with fairness to the applicant and the public.

Any interested person may make written suggestions or comments on the proposed amendment on or before June 29, 2005. Such written materials should be directed to Gregory Jones, Realty Services Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6629. People who wish to convey their views orally should contact the Realty Services Bureau at (515)281-5806 or at the Realty Services Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on June 30, 2005, at 1:30 p.m. in the Fourth Floor East Conference Room, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa, at which time people may present their views either orally or in writing. At the hearing, people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of special needs.

This amendment is intended to implement Iowa Code sections 461A.4, 461A.11, 461A.18, and 461A.25.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 571—Chapter 18 and adopt in lieu thereof the following **new** chapter:

CHAPTER 18
LEASES OF STATE-OWNED OR DEDICATED
PUBLIC PROPERTY

571—18.1(461A) Purpose. The purpose of these rules is to regulate leases in order to protect public rights and interest in public lands and waters of the state of Iowa under the jurisdiction of the commission.

571—18.2(461A) Policy. When a person applies for permission to begin or continue a private use of public property of the state of Iowa under the jurisdiction of the commission, it is the policy of the natural resource commission to recommend that the executive council of Iowa lease the property when the commission determines that leasing would be an appropriate alternative to denial and, if applicable, removal of the private use. In determining whether to recommend a lease, the commission will consider: whether the private use would have a substantial adverse effect on public use and enjoyment of public property in the vicinity of the subject area; and whether the private use would have a substantial adverse effect on fish or wildlife habitat, a threatened or endangered species, or the aquatic ecosystem.

571—18.3(461A) Applicability. This chapter is applicable to all state-owned lands and waters and all lands dedicated to the public, under the jurisdiction of the commission, except those leased for agricultural purposes; commercial concession operations; barge fleeting; and removal of sand, gravel and other natural materials.

571—18.4(461A) Definitions.

“Commission” means the natural resource commission.

“Department” means the department of natural resources.

“Director” means the director of the department of natural resources or the director’s designee.

“Person” means any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, municipality, cooperative, estate, trust, receiver, executor, administrator, fiduciary and any representative appointed by order of any court or otherwise acting on behalf of others.

571—18.5(461A) Application. An applicant for a lease, or a renewal of a lease, shall submit an application to the department on forms provided by the department.

18.5(1) Applicant. An applicant for a lease must be a person as defined in these rules.

18.5(2) Content of application. The following shall be included in the application:

- a. A fee of \$300 for the cost of review of a lease application.
- b. Applicant’s name, address, telephone number, and state of incorporation (if applicable) and whether the application is for a new lease or renewal.
- c. A map or drawing showing the location of the proposed lease area, including the section, township, range, and county.
- d. The legal description and tax parcel designation of the applicant’s property, or the property the applicant has an interest in as provided in 18.5(2)“g,” which abuts the proposed lease area.
- e. A description of the applicant’s need for the lease and the proposed uses of the lease area.
- f. For lease of a riverbed or lakebed, proof that the applicant has riparian rights on the waterway adjacent to the entire area of the lease for the entire period of the lease. Proof may include fee simple title, a lease of riparian rights from the riparian owner, or written permission from the riparian owner.
- g. Signature of applicant or authorized agent.

571—18.6(461A) Application review and approval.

18.6(1) Review of application. Upon receipt of an application that complies with the requirements of 18.5(461A), the department will review the application to determine whether the application complies with applicable criteria in these rules.

18.6(2) Lease approval. If the director determines that there is not a material issue concerning whether the application complies with applicable criteria in these rules, the lease will be presented to the commission to obtain the commission’s recommendation of approval to the executive council of Iowa. Final approval of the lease shall be by the executive council of Iowa.

571—18.7(461A) Fees under residential assessed areas. In the case of leases for land where adjacent privately owned land is assessed for tax purposes as residential, the annual lease fee shall be calculated as follows:

Assessed land value per square foot of the adjacent privately owned parcel, as it appears in the records of the local

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property tax assessor, multiplied by 6.5 percent; multiplied by the square feet leased; multiplied by 75 percent.

571—18.8(461A) Fees under commercial or industrial assessed areas. In the case of leases for land where adjacent privately owned land is assessed for tax purposes as commercial or industrial, the annual lease fee shall be calculated as follows:

Assessed land value per square foot of the adjacent privately owned parcel, as it appears in the records of the local property tax assessor, multiplied by 8 percent; multiplied by the square feet leased; multiplied by 75 percent.

571—18.9(461A) Fees under agricultural assessed areas. In the case of leases for land where adjacent privately owned land is assessed for tax purposes as agricultural, the department shall determine the per-square-foot agricultural land value for the county where the leased area is located as it appears in the most recent Iowa Land Values Survey published by Iowa State University Extension. That determined value shall be considered the assessed value of the area to be leased. The annual lease fee shall be calculated as follows:

Determined assessed value multiplied by 4 percent; multiplied by square feet leased.

571—18.10(461A) Minimum fee and phase-in of fee increases. The minimum annual lease fee shall be \$200. The commission may include in a lease approval a phase-in of a fee increase resulting from adoption of rules modifying procedures for determining fees. If in the interest of fairness to the applicant and the public, the commission may recommend a discount of 60 percent in the fee for the first year and a discount of 30 percent in the fee for the second year in a lease issued in calendar year 2006, and a discount of 30 percent for the first year in a lease issued in calendar year 2007.

571—18.11(461A) Fees for leases determined by real estate appraisal.

18.11(1) Optional fee determination. The applicant may choose to have the lease fee determined by an appraisal by a private licensed real estate appraiser. In the event the lease fee is to be determined by appraisal, the department shall contract for the appraisal and pay the appraiser's fee. The applicant shall reimburse the department the cost of the appraiser's fee. The lease fee shall be the lower of the appraised amount or the amount calculated according to another method set forth in these rules.

18.11(2) No assessed value. In the case of leases for land where the adjacent land has no assessed value for tax purposes, the lease fee shall be determined by an appraisal by a private licensed real estate appraiser in accordance with the procedures set forth in 18.11(1).

571—18.12(461A) Alternative fees. When the director determines that any specific annual lease fee, calculated as set forth in these rules, is not appropriate in the particular circumstances, the director may recommend that the commission adjust that fee. The director and commission may consider availability of the property for public use, the type of private use being made of the property, appraised value, effect on natural resources, and other factors relevant in valuing the lease.

571—18.13(461A) Disputes concerning leases. Contested case procedures are not applicable to disputes concerning leases under this chapter. A commission decision whether or not to recommend a lease or a particular condition of a lease is final agency action, subject to the right of an applicant or other affected person to file with the director a written request for reconsideration by the commission. The director must re-

ceive the request for reconsideration within 30 days after the commission's decision on a proposed lease. A commission decision to recommend a lease will be forwarded to the executive council of Iowa for approval after 30 days following the commission's decision unless the director has been notified of a written request for reconsideration or of the filing of a petition for judicial review of the commission's recommendation.

571—18.14(461A) License alternative for certain minimal encroachments. In circumstances in which a noncommercial, minor encroachment on public property has resulted from a private use that inadvertently extends over a property boundary, the director may recommend to the commission that the applicant be given the option of entering into a license agreement. The license agreement shall provide that the encroachment may be maintained on the public property throughout the encroachment's useful life absent a substantial change in circumstances justifying removal of the encroachment. The license agreement shall be in a form eligible for filing with the county recorder and shall include a legal description of the applicant's real estate that is affected by the agreement. The applicant for a license shall pay a one-time fee of \$200, which shall include the costs for the department to file the license agreement with the recorder of the county in which the subject property is located. The department may waive all or part of the fee based on the applicant's documented hardship.

These rules are intended to implement Iowa Code sections 461A.4, 461A.11, 461A.18 and 461A.25.

ARC 4236B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, “Boating Speed and Distance Zoning,” Iowa Administrative Code.

The Department has been petitioned by the Decatur County Board of Supervisors to draft a rule which will allow water skiing within a designated area at the lower end of Little River Lake in Decatur County. The Decatur County Conservation Board will be responsible for placement of buoy markers to designate the zoned area. Also, the United States Department of the Interior, Fish & Wildlife Service, has petitioned the Department to draft a rule which would establish a “no-wake” zone in a backwater area known as Johnson Slough located on the Mississippi River, navigation pool ten in Clayton County. This request is being made in an effort to reduce the negative impacts of large vessels operated at higher speeds, the resulting shoreline erosion and excessive noise levels, and to protect the integrity of Effigy Mounds National Monument. The federal government owns all lands surrounding Johnson Slough.

Any interested person may make written suggestions or comments on the proposed amendment on or before June 28,

NATURAL RESOURCE COMMISSION[571](cont'd)

2005. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515.

A public hearing will be held on June 28, 2005, at 10 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code section 456A.24.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend 571—Chapter 40 by adopting the following **new** rules:

571—40.51(462A) Little River Lake, Decatur County. Motorboats of outboard or inboard-outdrive type shall be permitted on Little River Lake. Vessels operating within a designated area beginning at the dam and extending north approximately to the mouth of "Bait Shop Bay" may operate at speeds greater than no-wake. The Decatur County Conservation Board shall designate the speed zone with marker buoys approved by the natural resource commission.

571—40.52(462A) Zoning of the Mississippi River, Johnson Slough, Clayton County. All vessels shall be operated at a no-wake speed within the area of river mile markers 627 and 629.8, in a backwater known as Johnson Slough and designated by marker buoys approved by the natural resource commission.

ARC 4235B**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 52, "Wildlife Refuges," Iowa Administrative Code.

This amendment adds the Kellerton Prairie Chicken Management Area in Ringgold County to the list of wildlife refuges.

Any interested person may make written suggestions or comments on the proposed amendment on or before June 28,

2005. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on June 28, 2005, at 10:30 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **52.1(2)**, paragraph "c," as follows:

c. It shall be unlawful to trespass in any manner on the following areas or portion of the areas during the time of the year they are posted as refuges. Department personnel and law enforcement officials may enter the area at any time in performance of their duties, ~~and hunters under the supervision of department staff may enter to retrieve dead or wounded game animals.~~ *Other persons may enter the refuges only when specifically authorized by the department.*

AreaCounty

Gladys Black Eagle Refuge Marion
Kellerton Prairie Chicken Management Area . . . Ringgold

ARC 4201B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby gives Notice of Intended Action to amend Chapter 240, "Licensure of Psychologists," Chapter 241, "Continuing Education for Psychologists," and Chapter 243, "Fees," Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Any interested person may make written comments on the proposed amendments no later than June 28, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 28, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154B and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—240.1(154B)** as follows:

Rescind the definition of "lapsed license."

Adopt the following **new** definitions in alphabetical order: "Active license" means a license that is current and has not expired.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Reactivate" or "reactivation" means the process as outlined in rule 240.18(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

Amend the following definition:

"Licensure by endorsement" means the issuance of an Iowa license to practice psychology to an applicant who is ~~currently~~ *or has been* licensed in another state.

ITEM 2. Rescind subrule 240.10(4) and adopt in lieu thereof the following **new** subrule:

240.10(4) Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- a. Licensee's name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the license.

ITEM 3. Rescind subrule 240.12(1) and adopt in lieu thereof the following **new** subrule:

240.12(1) The biennial license renewal period for a license to practice psychology shall begin on July 1 of even-numbered years and end on June 30 of the next even-numbered year. The board shall send a renewal notice by regular mail to each licensee at the address on record at least

60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Rescind subrule 240.12(3) and adopt in lieu thereof the following **new** subrule:

240.12(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—241.2(272C) and the mandatory reporting requirements of subrule 240.12(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

ITEM 5. Rescind subrule 240.12(5) and adopt in lieu thereof the following **new** subrule:

240.12(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 6. Amend subrule **240.12(7)**, paragraph "a," as follows:

a. To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within ~~one month following the expiration date on the wallet card~~ *the grace period*.

ITEM 7. Adopt **new** subrule 240.12(8) as follows:

240.12(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a psychologist or health service provider in psychology in Iowa until the license is reactivated. A licensee who practices as a psychologist or health service provider in psychology in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 8. Rescind and reserve rules **645—240.13(272C)** and **645—240.14(272C)**.

ITEM 9. Rescind rule 645—240.17(17A,147,272C) and adopt in lieu thereof the following **new** rule:

645—240.17(17A,147,272C) License denial.

240.17(1) When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

240.17(2) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ly describe the facts to be contested and determined at the hearing.

240.17(3) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 10. Adopt the following **new** rules:

645—240.18(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

240.18(1) Submit a reactivation application on a form provided by the board.

240.18(2) Pay the reactivation fee that is due as specified in 645—Chapter 243.

240.18(3) Provide verification of current competence to practice as a psychologist or health service provider in psychology by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 80 hours of continuing education within two years of application for reactivation.

645—240.19(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 240.18(17A,147,272C) prior to practicing as a psychologist or health service provider in psychology in this state.

ITEM 11. Amend rule **645—241.1(272C)** as follows:

Rescind the definitions of "administrator" and "lapsed license."

Adopt the following **new** definition in alphabetical order: "Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

Amend the following definitions:

"Active license" means ~~the~~ a license of a person who is acting, functioning, and working in compliance with license requirements ~~that is current and has not expired.~~

"Hour of continuing education" means ~~a clock hour at least 50 minutes~~ spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means ~~the license of a person who is not in practice in the state of Iowa; a license that has expired because it was not renewed by the end of the grace period.~~ The category of "inactive license" may include licenses formerly known as *lapsed, inactive, delinquent, closed, or retired.*

ITEM 12. Amend subrules 241.2(3) and 241.2(4) as follows:

241.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must ~~meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that implement them~~ be in accordance with these rules.

241.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. *A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.*

ITEM 13. Amend rule 645—241.3(272C), catchwords, as follows:

645—241.3(154B,272C) Standards for approval.

ITEM 14. Amend subrule 241.3(1), introductory paragraph and paragraph "c," as follows:

241.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is ~~determined by the board that the continuing education activity:~~

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. ~~The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The At the time of audit, the board may request the qualifications of presenters;~~

ITEM 15. Amend subrule **241.3(1)**, paragraph "e," subparagraphs (2) and (3), as follows:

(2) Number of program contact hours ~~(One contact hour equals one hour of continuing education credit.); and~~

(3) ~~Official signature or verification by program sponsor~~ *Certificate of completion or evidence of successful completion of the course provided by the course sponsor;* and

ITEM 16. Rescind rule 645—241.4(272C) and adopt the following **new** rule in lieu thereof:

645—241.4(154B,272C) Audit of continuing education report. After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

241.4(1) The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

241.4(2) The licensee shall provide the following information to the board for auditing purposes:

a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;

b. Number of contact hours for program attended; and

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

241.4(3) For auditing purposes, all licensees must retain the information identified in subrule 241.4(2) for two years after the biennium has ended.

241.4(4) Information identified in subrule 241.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

241.4(5) If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

241.4(6) Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 17. Rescind rule 645—241.5(272C) and adopt the following **new** rule in lieu thereof:

645—241.5(154B,272C) Automatic exemption. A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 18. Rescind rules 645—241.6(272C) and 645—241.7(272C) and adopt the following **new** rules in lieu thereof:

645—241.6(154B,272C) Continuing education exemption for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

241.6(1) The board may grant an extension of time to fulfill the continuing education requirement.

241.6(2) The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

241.6(3) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

645—241.7(154B,272C) Grounds for disciplinary action. The board may take formal disciplinary action on the following grounds:

241.7(1) Failure to cooperate with a board audit.

241.7(2) Failure to meet the continuing education requirement for licensure.

241.7(3) Falsification of information on the license renewal form.

241.7(4) Falsification of continuing education information.

ITEM 19. Rescind and reserve rules **645—241.8(272C)**, **645—241.9(272C)** and **645—241.10(272C)**.

ITEM 20. Amend subrules 243.1(4) and 243.1(5) as follows:

243.1(4) ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee is \$190.*

243.1(5) Duplicate or reissued license certificate *or wallet card* fee is \$10.

ITEM 21. Rescind and reserve subrule **243.1(6)**.

ARC 4200B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby gives Notice of Intended Action to amend Chapter 240, “Licensure of Psychologists,” Chapter 241, “Continuing Education for Psychologists,” and Chapter 242, “Discipline for Psychologists,” Iowa Administrative Code.

These proposed amendments remove a payment mechanism; clarify the requirements for the health service provider in psychology; remove obsolete language regarding continuing education; and add new subrule 242.2(32) that provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Any interested person may make written comments on the proposed amendments no later than June 28, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 28, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154B and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **240.2(1)**, paragraph "c," as follows:

c. Each application shall be accompanied by the appropriate fees (exclusive of the test administration fee) payable by check or money order to the Board of Psychology Examiners. The fees are nonrefundable.

ITEM 2. Rescind subrule 240.7(1) and adopt in lieu thereof the following **new** subrule:

240.7(1) Requirements for the health service provider in psychology. The applicant shall:

a. Verify at least two years of clinical experience in a recognized health service setting or meet the standards of the National Register of Health Service Providers in Psychology. Two years of clinical experience means two years of supervised experience in health service in psychology, of which at least one year is in an organized health service training program as defined in subrule 240.7(2) and one year is postdoctoral.

b. Complete a board-approved application and submit supporting documentation. Application forms may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to the Board of Psychology Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. An applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

c. Submit with the application the health service provider fee payable to the Board of Psychology Examiners. The fee is nonrefundable.

d. Renew the certificate biennially at the same time as the psychology license renewal fees are due.

ITEM 3. Amend subrule 241.2(1) as follows:

241.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of even-numbered years and ending on June 30 of even-numbered years. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 40 hours of continuing education approved by the board. ~~For the 2002 renewal cycle only, 50 hours of continuing education will be due by June 30, 2002. Continuing education credit earned from December 31, 2001, through June 30, 2002, may be used for either the 2002 renewal cycle or the following biennium. The licensee may use the earned continuing education credit hours only once. Credit may not be duplicated for both compliance periods.~~

~~This applies for the renewal biennium of 2002 and for the following renewal biennium. Continuing education hours will return to 40 hours each biennium at the end of this prorated compliance period.~~

ITEM 4. Adopt **new** subrule 242.2(32) as follows:

242.2(32) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

ARC 4203B

PROFESSIONAL LICENSURE
DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work Examiners hereby gives Notice of Intended Action to amend Chapter 280, "Licensure of Social Workers," Chapter 281, "Continuing Education for Social Workers," and Chapter 284, "Fees," Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments no later than June 28, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 28, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—280.1(154C)** as follows:

Rescind the definition of "lapsed license."

Adopt the following **new** definitions in alphabetical order: "Active license" means a license that is current and has not expired.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be ac-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tive. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Reactivate" or "reactivation" means the process as outlined in rule 280.14(17A,147,272C) by which an inactive license is restored to active status.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

Amend the following definition:

"Licensure by endorsement" means the issuance of an Iowa license to practice social work to an applicant who is *currently or has been* licensed in another state.

ITEM 2. Amend rule **645—280.7(154C)** by rescinding numbered paragraph "**6**" and adopt in lieu thereof the following **new** numbered paragraph "**6**":

6. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

ITEM 3. Rescind subrule 280.9(1) and adopt in lieu thereof the following **new** subrule:

280.9(1) The biennial license renewal period for a license to practice social work shall begin on January 1 of odd-numbered years and end on December 31 of the next even-numbered year. Every licensee shall renew on a biennial basis. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Rescind subrule 280.9(2) and adopt in lieu thereof the following **new** subrule:

280.9(2) Renewal procedures.

a. A licensee seeking renewal shall:

(1) Meet the continuing education requirements of rule 645—281.2(154C,272C) and the mandatory reporting requirements of subrule 280.9(3). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

(2) Submit the completed renewal application and renewal fee before the license expiration date.

b. Individuals who were issued their initial licenses within six months of the license renewal date will not be required to renew their licenses until the next renewal two years later.

c. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will

be required to complete a minimum of 27 hours of continuing education per biennium for each subsequent license renewal.

d. Persons licensed to practice social work shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

e. Failure to receive the notice of renewal shall not relieve the licensee of the responsibility for submitting the required materials and the renewal fee to the board office 30 days before license expiration.

f. A pending application for a higher level of licensure does not relieve the social worker of the renewal or reactivation requirements. A social worker applying for a higher level shall renew the license that is held at the current level at the time of the renewal.

g. A social worker whose Iowa license is inactive, delinquent, closed, retired, voluntarily surrendered, suspended, or revoked cannot advance to a higher level until the license is again active.

ITEM 5. Rescind subrule 280.9(4) and adopt in lieu thereof the following **new** subrule:

280.9(4) Late renewal. To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

ITEM 6. Rescind subrule 280.9(5) and adopt the following **new** subrule in lieu thereof:

280.9(5) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a social worker in Iowa until the license is reactivated. A licensee who practices as a social worker in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 7. Adopt the following **new** subrule:

280.9(6) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 8. Rescind and reserve rules **645—280.10(272C)** and **645—280.11(272C)**.

ITEM 9. Rescind rule 645—280.13(17A,147,272C) and adopt in lieu thereof the following **new** rule:

645—280.13(17A,147,272C) License denial.

280.13(1) When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

280.13(2) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

280.13(3) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 10. Adopt the following **new** rules:

645—280.14(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

280.14(1) Submit a reactivation application on a form provided by the board.

280.14(2) Pay the reactivation fee that is due as specified in 645—Chapter 284.

280.14(3) Provide verification of current competence to practice social work by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 27 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 27 hours of continuing education within two years of application for reactivation; and

(3) Verification of taking and passing the ASWB examination at the appropriate level as follows:

1. Bachelor level social worker – the bachelor's level examination; or
2. Master level social worker – the master's level examination; or
3. Independent level social worker – the clinical level examination.

645—280.15(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 280.14(17A,147,272C) prior to practicing social work in this state.

ITEM 11. Amend rule **645—281.1(154C)** as follows:

Rescind the definitions of “administrator,” “approved sponsor,” and “lapsed license.”

Adopt the following **new** definition in alphabetical order: “Independent study” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

Amend the following definitions:

“Active license” means ~~the a license of a person who is acting, practicing, functioning and working in compliance with license requirements that is current and has not expired.~~

“Approved program/activity” means a continuing education program/activity meeting the standards set forth in these rules, ~~which has received advance approval by the board pursuant to these rules.~~

“Audit” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period ~~or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.~~

“Hour of continuing education” means ~~a clock hour at least 50 minutes~~ spent by a licensee in actual attendance at and completion of ~~an~~ approved continuing education activity.

“Inactive license” means ~~the a license of a person who is not engaged in practice in the state of Iowa, that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.~~

ITEM 12. Amend subrules 281.2(3) and 281.2(4) as follows:

281.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be ~~approved by the board or otherwise meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that implement them in accordance with these rules.~~

281.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. *A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.*

ITEM 13. Amend rule 645—281.3(154C), catchwords, as follows:

645—281.3(154C,272C) Standards for approval.

ITEM 14. Amend subrule 281.3(1), introductory paragraph and paragraph “c,” as follows:

281.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is ~~determined by the board that the continuing education activity:~~

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. ~~The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The~~ *At the time of audit, the board may request the qualifications of presenters.*

ITEM 15. Amend subrule **281.3(1)**, paragraph “e,” subparagraphs (2) and (3), as follows:

(2) Number of program contact hours (~~One contact hour equals one hour of continuing education credit;~~) and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(3) ~~Official signature or verification by program sponsor~~ *Certificate of completion or evidence of successful completion of the course provided by the course sponsor*; and

ITEM 16. Rescind rule 645—281.4(154C) and adopt the following **new** rule in lieu thereof:

645—281.4(154C,272C) Audit of continuing education report. After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

281.4(1) The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

281.4(2) The licensee shall provide the following information to the board for auditing purposes:

a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;

b. Number of contact hours for program attended; and

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

281.4(3) For auditing purposes, all licensees must retain the information identified in subrule 281.4(2) for two years after the biennium has ended.

281.4(4) Information identified in subrule 281.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

281.4(5) If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

281.4(6) Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 17. Rescind rule 645—281.5(154C) and adopt the following **new** rule in lieu thereof:

645—281.5(154C,272C) Automatic exemption. A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or

2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or

3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 18. Rescind rules 645—281.6(154C) and 645—281.7(154C,272C) and adopt the following **new** rules in lieu thereof:

645—281.6(154C,272C) Continuing education waiver for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may ap-

ply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

281.6(1) The board may grant an extension of time to fulfill the continuing education requirement.

281.6(2) The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

281.6(3) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

645—281.7(154C,272C) Grounds for disciplinary action. The board may take formal disciplinary action on the following grounds:

281.7(1) Failure to cooperate with a board audit.

281.7(2) Failure to meet the continuing education requirement for licensure.

281.7(3) Falsification of information on the license renewal form.

281.7(4) Falsification of continuing education information.

ITEM 19. Rescind and reserve rules **645—281.8(154C,272C)**, **645—281.9(154C,272C)**, **645—281.10(154C,272C)** and **645—281.11(272C)**.

ITEM 20. Amend subrules 284.1(4) and 284.1(5) as follows:

284.1(4) ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee for a license at the bachelor's level is \$110; for the master's level, \$150; and independent level, \$170.*

284.1(5) Duplicate license *certificate or wallet card* fee is \$10.

ARC 4202B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work Examiners hereby gives Notice of Intended Action to amend Chapter 280, “Licensure of Social Workers,” Chapter 281, “Continuing Education for Social Workers,” and Chapter 283, “Discipline for Social Workers,” Iowa Administrative Code.

The proposed amendments add language to clarify what is required in applying for an initial license and for license renewal, change the term “self-study” to “independent study” and adopt new subrule 283.2(31) that provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Any interested person may make written comments on the proposed amendments no later than June 28, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 28, 2005, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Renumber subrules **280.3(5)** through **280.3(10)** as **280.3(6)** through **280.3(11)** and adopt **new** subrule 280.3(5) as follows:

280.3(5) The applicant shall provide verification of license(s) from every state in which the applicant has been licensed as a social worker, sent directly from the state(s) to the Iowa board of social work examiners office.

ITEM 2. Amend subrule **281.3(2)**, paragraph “b,” as follows:

b. A maximum of 12 hours per biennium for *self-study independent study* courses.

ITEM 3. Adopt **new** subrule 283.2(31) as follows:

283.2(31) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

ARC 4217B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 300, “Licensure of Speech Pathologists and Audiologists,” Chapter 303, “Continuing Education for Speech Pathologists and Audiologists,” and Chapter 305, “Fees,” Iowa Administrative Code.

These proposed amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Any interested person may make written comments on the proposed amendments no later than June 28, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 28, 2005, from 8 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—300.1(147)** as follows:

Rescind the definition of “lapsed license.”

Adopt the following **new** definitions in alphabetical order:

“Active license” means a license that is current and has not expired.

“Grace period” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“Reactivate” or “reactivation” means the process as outlined in rule 300.17(17A,147,272C) by which an inactive license is restored to active status.

“Reinstatement” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license sus-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

pending or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

Amend the following definition:

“Licensure by endorsement” means the issuance of an Iowa license to practice speech pathology or audiology to an applicant who is *currently or has been* licensed in another state.

ITEM 2. Amend rule **645—300.9(147)** by rescinding numbered paragraph “5” and adopting in lieu thereof the following **new** numbered paragraph “5”:

5. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- Licensee’s name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

ITEM 3. Rescind subrule 300.11(1) and adopt in lieu thereof the following **new** subrule:

300.11(1) The biennial license renewal period for a license to practice speech pathology or audiology shall begin on January 1 of an even-numbered year and end on December 31 of the next odd-numbered year. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

ITEM 4. Rescind subrule 300.11(3) and adopt in lieu thereof the following **new** subrule:

300.11(3) A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—303.2(147) and the mandatory reporting requirements of subrule 300.11(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and
- b. Submit the completed renewal application and renewal fee before the license expiration date.

ITEM 5. Rescind subrule 300.11(5) and adopt in lieu thereof the following **new** subrule:

300.11(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

ITEM 6. Amend subrule 300.11(7) as follows:

300.11(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 305.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within ~~one month following the expiration date on the wallet card~~ *the grace period*.

ITEM 7. Adopt **new** subrule 300.11(8) as follows:

300.11(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a speech pathologist or audiologist in Iowa until the license is reactivated. A licensee who practices as a speech pathologist or audiologist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 8. Rescind and reserve rules **645—300.12(272C)** and **645—300.13(272C)**.

ITEM 9. Rescind rule 645—300.16(17A,147,272C) and adopt in lieu thereof the following **new** rule:

645—300.16(17A,147,272C) License denial.

300.16(1) When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

300.16(2) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

300.16(3) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

ITEM 10. Adopt the following **new** rules:

645—300.17(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

300.17(1) Submit a reactivation application on a form provided by the board.

300.17(2) Pay the reactivation fee that is due as specified in 645—Chapter 305.

300.17(3) Provide verification of current competence to practice speech pathology and audiology by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:

1. Licensee’s name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 30 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
 2. Date of initial licensure;
 3. Current licensure status; and
 4. Any disciplinary action taken against the license; and
- (2) Verification of completion of 30 hours of continuing education within two years of application for reactivation; and
- (3) Verification of passing the National Teacher Examination (NTE) for Speech Pathology or Audiology.

645—300.18(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 300.17(17A,147,272C) prior to practicing speech pathology and audiology in this state.

ITEM 11. Amend rule **645—303.1(147,272C)** as follows:

Rescind the definitions of “administrator,” “approved sponsor,” and “lapsed license.”

Adopt the following new definition in alphabetical order: “Independent study” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

Amend the following definitions:

“Active license” means ~~the a~~ license of a person who is acting, practicing, functioning, and working in compliance with license requirements ~~that is current and has not expired~~.

“Approved program/activity” means a continuing education program/activity meeting the standards set forth in these rules, ~~which has received advance approval by the board pursuant to these rules~~.

“Audit” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period ~~or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period~~.

“Hour of continuing education” means ~~a clock hour~~ at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

“Inactive license” means ~~the license of a person who is not engaged in practice in the state of Iowa. a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.~~

ITEM 12. Amend subrules 303.2(3) and 303.2(4) as follows:

303.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be ~~approved by the board or otherwise meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that implement them in accordance with these rules~~.

303.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for second renewal. *A licensee whose license was reactivated during the current renewal compliance period may use continuing*

education earned during the compliance period for the first renewal following reactivation.

ITEM 13. Amend rule 645—303.3(147), catchwords, as follows:

645—303.3(147,272C) Standards for approval.

ITEM 14. Amend subrule 303.3(1), introductory paragraph and paragraph “c,” as follows:

303.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is ~~determined by the board~~ that the continuing education activity:

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. ~~The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The~~ *At the time of audit, the board may request the qualifications of presenters;*

ITEM 15. Amend subrule **303.3(1)**, paragraph “c,” subparagraphs (2) and (3), as follows:

(2) Number of program contact hours (~~One contact hour equals one hour of continuing education credit~~); and

(3) ~~Official signature or verification by program sponsor~~ *Certificate of completion or evidence of successful completion of the course provided by the course sponsor.*

ITEM 16. Rescind rule 645—303.4(147) and adopt the following new rule in lieu thereof:

645—303.4(147,272C) Audit of continuing education report. After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

303.4(1) The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

303.4(2) The licensee shall provide the following information to the board for auditing purposes:

a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;

b. Number of contact hours for program attended; and

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

303.4(3) For auditing purposes, all licensees must retain the information identified in subrule 303.4(2) for two years after the biennium has ended.

303.4(4) Information identified in subrule 303.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

303.4(5) If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

303.4(6) Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

ITEM 17. Rescind rule 645—303.5(147) and adopt the following **new** rule in lieu thereof:

645—303.5(147,272C) Automatic exemption. A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

ITEM 18. Rescind rules 645—303.6(147) and 645—303.7(147,272C) and adopt the following **new** rules in lieu thereof:

645—303.6(147,272C) Continuing education exemption for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

303.6(1) The board may grant an extension of time to fulfill the continuing education requirement.

303.6(2) The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

303.6(3) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

645—303.7(147,272C) Grounds for disciplinary action. The board may take formal disciplinary action on the following grounds:

- 303.7(1)** Failure to cooperate with a board audit.
- 303.7(2)** Failure to meet the continuing education requirement for licensure.
- 303.7(3)** Falsification of information on the license renewal form.
- 303.7(4)** Falsification of continuing education information.

ITEM 19. Rescind rules **645—303.8(147,272C)**, **645—303.9(147,272C)**, **645—303.10(147,272C)** and **645—303.11(272C)**.

ITEM 20. Amend subrules 305.1(4) and 305.1(5) as follows:

305.1(4) ~~Reinstatement fee for a lapsed license or an inactive license is \$50~~ *Reactivation fee is \$130.*

305.1(5) *Duplicate or reissued license certificate or wallet card fee is \$10.*

ITEM 21. Rescind and reserve subrule **305.1(6)**.

ARC 4216B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 300, “Licensure of Speech Pathologists and Audiologists,” Chapter 303, “Continuing Education for Speech Pathologists and Audiologists,” and Chapter 304, “Discipline for Speech Pathologists and Audiologists,” Iowa Administrative Code.

The proposed amendments amend payment language; clarify required transcript information; provide that applicants may request that the board retain an incomplete application; add the doctoral degree to educational qualifications; clarify that the Board must approve the permit plan before the applicant may begin practice; adopt a new rule regarding licensure by endorsement; add two new definitions; remove obsolete language regarding continuing education; clarify the requirements for independent study; and add a subrule that provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Any interested person may make written comments on the proposed amendments no later than June 28, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on June 28, 2005, from 8 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The following amendments are proposed.

ITEM 1. Amend subrule 300.3(3) as follows:

300.3(3) Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Speech Pathology and Audiology Examiners. The fees are nonrefundable.

ITEM 2. Amend subrule **300.3(4)**, paragraph “b,” as follows:

b. Submission of the following:

(1) Official copies of academic transcripts sent directly from the school to the board showing proof of possession of a master’s degree *in speech pathology or a master’s or doctoral degree in audiology* or its the equivalent of one of these degrees and official verification of completion of not less than 300 hours of supervised clinical training;

(2) Verification of nine months of full-time clinical experience, or equivalent, completed after the master’s degree, under the supervision of a licensed speech pathologist or audiologist *or as a part of the doctoral degree*; and

(3) Results of the National Teacher Examination.

ITEM 3. Amend subrule 300.3(6) as follows:

300.3(6) Incomplete applications that have been on file in the board office for more than two years shall be considered:

a. *Considered* invalid and shall be destroyed.; or

b. *Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.*

ITEM 4. Amend subrule **300.4(1)**, paragraph “b,” as follows:

b. A master’s *or doctoral* degree or its the equivalent from an accredited school, college or university with a major in audiology.

ITEM 5. Amend subrule 300.6(2), introductory paragraph, as follows:

300.6(2) The plan for supervised clinical experience *must be approved by the board before the applicant starts practice* and shall:

ITEM 6. Rescind rule 645—300.9(147) and adopt the following **new** rule in lieu thereof:

645—300.9(147) Licensure by endorsement. An applicant who has been a licensed speech pathologist or audiologist under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of an ASHA certificate or at least nine months of full-time clinical experience or its equivalent;
4. Shows evidence that the National Teacher Examination scores have been sent directly from the examination service to the board;
5. Provides official copies of the academic transcripts; and
6. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

- Licensee’s name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

ITEM 7. Amend rule **645—303.1(147)** by adopting the following **new** definitions in alphabetical order:

“AAA” means the American Association of Audiology.

“ASHA” means the American Speech-Language Hearing Association.

ITEM 8. Amend subrule 303.2(1) as follows:

303.2(1) The biennial continuing education compliance period shall extend for a two-year period between January 1 of each even-numbered year and December 31 of each odd-numbered year. Each biennium, each person who is licensed to practice as a speech pathology or audiology licensee in this state shall be required to complete a minimum of 30 hours of continuing education approved by the board. ~~Continuing education credit earned from September 1, 2001, through December 31, 2001, may be used for either the compliance period ending December 31, 2001, or the following biennial compliance period. The licensee may use the earned continuing education credit hours only once. Credit may not be duplicated for both compliance periods. A person holding licensure in both speech pathology and audiology must meet the requirements for each profession.~~

ITEM 9. Amend subrule **303.3(2)** as follows:

Rescind paragraphs “b” and “c” and reletter paragraphs “d” to “g” as “b” to “e.”

Amend relettered paragraph “c” as follows:

c. Independent study. ~~The independent study plan must be submitted and approved before the licensee begins the study. The projected date of completion must be recorded on the board-provided application form. An independent study report must be filed within 30 days after the projected date of completion. One 30-day extension may be granted upon the condition that such a request in writing is received within 30 days of the projected date of completion. A reminder will not be sent by the board.~~

(1) The maximum number of hours for independent study is 16 hours.

(2) Criteria for presentations are as follows:

1. A maximum of 10 hours of the maximum 16 hours of independent study credit will be given for presenting professional programs that meet the criteria as listed in rule 303.3(147,272C).

2. Two hours of credit will be awarded for each hour of new presentation material.

3. A course schedule or brochure must be maintained for audit, and an independent study plan must be submitted and approved prior to the presentation.

4. ~~An independent study report shall be filed within 30 days after the completion of the presentation.~~

ITEM 10. Adopt **new** subrule 304.2(32) as follows:

304.2(32) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

ARC 4208B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 73, “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC),” Iowa Administrative Code.

The purpose of this rule making is to update the language and definitions for consistency with the federal guidelines for the Special Supplemental Nutrition Program for Women, Infants, and Children and to implement a new WIC data system by September 2005.

Any interested person may make written or oral suggestions or comments on the amendments on or before June 28, 2005. Comments should be directed to Julie McMahon, Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Fifth Floor, Des Moines, Iowa 50319-0075; telephone (515)281-3104; fax (515)281-4913.

There will also be a public hearing on June 28, 2005, from 8:30 to 9:30 a.m. utilizing the Iowa Communications Network (ICN). Please call (515)281-4919 to schedule a time to speak at the hearing and to confirm the availability of the requested site. The following ICN sites have been confirmed for the hearing.

Iowa Department of Public Health (Origination site)
Lucas State Office Building, 6th Floor
321 East 12th Street
Des Moines

Iowa State University
Howe Hall
Ames
(515)294-7470

North Iowa Area Community College - 1
500 College Drive
Mason City
(641)423-1264

Spirit Lake High School
2701 Hill Ave.
Spirit Lake
(712)336-2820

Ottumwa Regional Health Center
1001 E. Pennsylvania
Ottumwa
(641)684-2450

Prairie Lakes AEA 8
330 Avenue M
Ft. Dodge
(515)574-5500

Iowa Valley Community College
123 6th Avenue West
Grinnell
(641)236-0513

Western Hills Area Education Agency 12
1520 Morningside Avenue
Sioux City
(712)274-6000

Iowa Western Community College
2700 College Road
Council Bluffs
(712)325-3200

Area Education Agency 26
3712 Cedar Heights Drive
Cedar Falls
(319)273-8200

Southwestern Community College - 2
2520 W. McClane
Osceola
(641)342-3531

Scott Community College 1
500 Belmont Road
Bettendorf
(563)441-4137

University of Dubuque
2000 University Avenue, Room T201
Dubuque
(563)589-3737

Kirkwood Community College - 2
6301 Kirkwood Blvd. SW
Cedar Rapids
(319)398-5452

Sioux Center Area Education Agency 4
1382 4th Ave. NE, Room 103
Sioux Center
(712)722-4378

Mount Pleasant Treatment Center
1200 E. Washington
Mount Pleasant
(319)385-9511

These amendments are intended to implement Iowa Code section 135.11.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—73.5(135)**, definitions of “peer group” and “postpartum women,” as follows:

“Peer group” means a system of grouping WIC vendors according to structure, ; type, ~~and~~, number of cash registers; *square footage*; and *sales*. Peer groups are used to establish statistical norms that an individual store may be compared against and provide the numeric baselines for the process of determining what may be fraudulent behavior.

“Postpartum women” means women up to six months postpregnancy *who are not breastfeeding*.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 2. Amend subrule **73.7(3)**, paragraph “a,” as follows:

a. The date of initial visit shall be the day on which an applicant first appears in person at any of the requests services from a contract agency's offices agency. A visit to another program office to complete a common application form does not constitute an initial visit.

ITEM 3. Amend subrule 73.8(3), introductory paragraph, as follows:

73.8(3) Responsibilities of department. Provision of foods through retail grocers and special purpose vendors is an integral part of the WIC program's function. It is the responsibility of the department to ensure that there are a sufficient number of stores authorized to provide reasonable access for program participants. The department also has an obligation to ensure that both food and administrative funds are expended in the most efficient manner possible. As with all other purchases made by state government, this means that the number of vendors (retail grocers and special purpose vendors) may be limited and that all vendors must meet minimum criteria for approval. A store that sells only WIC-approved foods to only WIC participants retailer that intends to derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments will not be allowed. The department shall be responsible for the following:

ITEM 4. Amend subrule 73.8(4), introductory paragraph, as follows:

73.8(4) Responsibilities of WIC vendors. A potential vendor shall make application to the Iowa department of public health WIC program and shall accept the obligations imposed by the signing of a WIC vendor agreement prior to acceptance of any WIC food instrument. The two categories for which any potential vendor may apply are grocery vendors and special purpose vendors. A potential vendor retailer that intends to do business with only WIC participants derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments will not be considered approved.

ITEM 5. Amend subrule **73.8(4)**, paragraph “b,” subparagraph (6), as follows:

(6) ~~WIC-only vendors are not allowed.~~ Vendors that derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments are not allowed.

ITEM 6. Amend subrule **73.8(5)**, paragraph “c,” as follows:

c. Compliance investigations may be used for any vendors. Compliance investigations will be conducted annually in a minimum percentage of vendors as mandated in federal regulations. A compliance investigation includes a sufficient number of compliance buys to provide evidence of program noncompliance, two compliance buys in which no program violations are found, or when an inventory audit has been completed. A compliance buy means a covert, on-site investigation in which a representative of the program poses as a participant, parent or caretaker, or proxy, transacts one or more food instruments and does not reveal during the visit that he or she is a WIC representative. Compliance buys may be performed by the department or another state agency or private company under contract with the department. The department is responsible for identifying the vendors to be investigated and for approving the protocol to be used during the investigation. Upon completion of a compliance buy

documenting program violations, the department shall issue the vendor a notice of violation points assessed ~~or suspension unless such notification would hinder an investigation.~~

The department also monitors vendor performance through in-office review of information. Such information, specifically the total amount of WIC redemptions, is confidential as provided for in Iowa Code section 22.7(6). This business information could provide an advantage to competitors and would serve no public purpose if made available.

ITEM 7. Amend subrules 73.13(1) and 73.13(2) as follows:

73.13(1) Right of appeal. A WIC participant shall have the right to appeal whenever a decision or action of the department or contract agency results in the individual's denial of participation, ~~suspension~~ *disqualification*, or termination from the WIC program. All hearings shall be conducted in accordance with these rules.

73.13(2) Notification of appeal rights and right to hearing. Each program participant shall be notified in writing of the participant's right to appeal and the procedures for requesting a hearing at the time of application and at the time of denial of eligibility or termination from the program (on Denial or Termination of Eligibility Form). Appeal and hearing notices shall also be written, posted, and immediately available at contract agencies to explain the method by which a hearing is requested, and that the participant may present arguments at the hearing either personally or through a representative such as a relative, friend, legal counsel, or other spokesperson.

ITEM 8. Amend subrule **73.19(1)**, paragraphs “c” to “h,” as follows:

c. The accumulation of 10 violation points within a 12-month period will result in a 2-month ~~suspension~~ *disqualification*.

The accumulation of 10 additional violation points within a 12-month period following the ~~suspension~~ *disqualification* will result in a 3-month ~~suspension~~ *disqualification*. The participant must then reapply for the program and be scheduled for a certification.

d. Fifteen days' notice must be given prior to all ~~suspensions~~ *disqualifications*. In all cases, the participant must be informed of the reason for the ~~suspension~~ *disqualification* and of the right to appeal the decision through the fair hearing process.

e. A ~~suspension~~ *disqualification* generally applies to all members of a family who are on the program. The competent professional authority may waive the ~~suspension~~ *disqualification* for one or more members of the family if it is determined that a serious health risk may result from program ~~suspension~~ *disqualification*. The reason for this waiver must be documented in the participant's file.

f. ~~One~~ The cashing of one or more food instruments cashed at the same time constitutes a single violation. Participants will not be charged with a second violation for minor violations worth 5 or fewer points for subsequent food instruments cashed between the first instance and the receipt of the violation notice if the violation is the same. If a major violation greater than 5 points occurs during this period, the participant will be ~~suspended~~ *disqualified*. Violations are cumulative.

g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement, or intentionally misrepresenting, concealing, or withholding facts, the department shall collect the cash value of the improperly used food instruments. Collection of over-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

payment is not required when the department determines it is not cost-effective to do so.

The contract agency shall issue a Statement of Restitution along with the ~~suspension~~ *disqualification* notice. The statement lists the serial numbers and dollar value of the food instruments for which payment is required.

The participant is required to surrender any unspent food instruments and send payment to the department in check or money order for those food instruments that have been cashed.

h. Each contract agency shall maintain a master list of all participant violation notices, ~~suspensions~~ *disqualifications*, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

ITEM 9. Amend subrule 73.19(2), introductory paragraph, as follows:

73.19(2) Vendor violations. There are five types of sanctions that are applied to vendors for violations of program regulations: nonpayment of food instruments, issuance of violation points, ~~suspensions~~ *temporary disqualification*, permanent disqualification, and civil money penalties.

ITEM 10. Amend subrule **73.19(2)**, paragraph "**b**," table of violations, as follows:

Rescind paragraph "**6**" and adopt the following **new** paragraph "**6**" in lieu thereof:

Violation	Points Per Event
6. Providing to WIC participants incentive items not prior authorized by the department.	10

Rescind paragraphs "**8**" and "**12**," renumber paragraphs "**9**" to "**11**" as "**8**" to "**10**" and renumber paragraphs "**13**" to "**24**" as "**11**" to "**22**."

ITEM 11. Amend subrule **73.19(2)**, paragraph "**c**," as follows:

c. ~~Suspensions~~ *One-year disqualification*. With an administrative finding of the following violations, the vendor will be ~~suspended~~ *disqualified* for one year.

(1) Accumulation of 45 or more violation points within the first year or 90 or more violation points within a single federal fiscal year of the agreement period.

(2) to (6) No change.

ITEM 12. Amend subrule **73.19(2)**, paragraph "**d**," introductory paragraph, as follows:

d. With an administrative finding of the following violations, the vendor will be ~~suspended~~ *disqualified from being a WIC vendor* for three years.

ITEM 13. Amend subrule **73.19(2)**, paragraph "**e**," introductory paragraph, as follows:

e. With an administrative finding of the following violations, the vendor will be ~~suspended~~ *disqualified* for six years.

ITEM 14. Amend subrule **73.19(2)**, paragraph "**g**," as follows:

g. The following items do not have a point value, but shall result in or extend a ~~suspension~~ *disqualification* period:

(1) Failure to return WIC vendor stamp(s) to the WIC program within ten days of effective date of ~~suspension~~ *disqualification*, or expiration of agreement following denial of subsequent application, shall result in a 30-day extension of a ~~suspension~~ *disqualification* period.

(2) For each month in which a vendor accepts WIC food instruments during a ~~suspension~~ *disqualification* period, the ~~suspension~~ *disqualification* period shall be extended by 30 days.

ITEM 15. Amend **73.19(2)**, paragraphs "**i**" to "**l**," as follows:

i. A vendor shall not be entitled to receive any compensation for revenues lost as a result of any ~~suspension~~ *temporary* or permanent disqualification.

j. A minimum of 15 days' notice is provided prior to all ~~suspensions~~ *disqualifications*, except for permanent disqualifications assessed under paragraph 73.19(2)"f," which are effective on the date of receipt of the notice of administrative action. When the department determines that an offense has occurred, a ~~suspension~~ *disqualification* letter with supporting documentation is prepared for the WIC director's signature. The ~~suspension~~ *disqualification* letter identifies the specific offenses that the vendor is charged with and the procedures for filing an appeal.

k. The department is responsible for issuing all warning and ~~suspension~~ *disqualification* letters. Contract agencies are informed of all vendor correspondence regarding violations. In situations where participant violations are also involved, the contract agency is responsible for follow-up, as detailed in subrule 73.19(1).

l. Federal food stamp regulations require automatic disqualification from the food stamp program for vendors ~~suspended~~ *disqualified* by the WIC program for certain types of violations. When a vendor is ~~suspended~~ *disqualified* from the WIC program, the ~~suspension~~ *disqualification* letter to the vendor will include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the food stamp program. Such disqualification may not be subject to administrative or judicial review under the food stamp program." For all vendor disqualifications from the WIC program, notice will be sent to the United States Department of Agriculture for appropriate action.

ARC 4209B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 131, "Emergency Medical Services Provider Education/Training/Certification," and Chapter 132, "Emergency Medical Service—Service Program Authorization," Iowa Administrative Code.

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical providers and establish a standard of conduct for training programs, students, and providers. These proposed amendments update the reference to the Iowa EMS Scope of Practice document to the most recent edition, April 2005. The amendments also remove the requirement that students be cleared by the Bureau of EMS prior to beginning the clinical portion of their training. The Bureau will continue to clear individuals for certification, but students may begin clinicals when approved by their training program and the clinical site.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Any interested person may make written comments or suggestions on the proposed amendments on or before June 28, 2005. Such written comments should be directed to Ray Jones, Bureau of EMS, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309. E-mail may be sent to rjones@idph.state.ia.us.

These amendments are intended to implement Iowa Code chapter 147A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **131.3(3)**, paragraph "**b**," as follows:

b. Scope of Practice for Iowa EMS Providers (~~November 2004~~ April 2005) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

ITEM 2. Amend subrule **131.4(1)**, paragraph "**g**," as follows:

g. When a student's EMS Student Registration or a candidate's EMS Certification Application is referred to the department for investigation, ~~the student shall not be eligible for clinical or field experience, and the candidate individual shall not be eligible for certification testing until approved by the department.~~

ITEM 3. Amend subrule **132.2(4)**, paragraph "**b**," as follows:

b. Scope of Practice for Iowa EMS Providers (~~November 2004~~ April 2005) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

ARC 4226B

PUBLIC SAFETY
DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 80A.15, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 2, "Bail Enforcement, Private Investigation and Private Security Businesses," Iowa Administrative Code.

This rule making incorporates the amendments to Chapter 2 that were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on May 25, 2005, as **ARC 4180B**. The amendments published as **ARC 4180B** became effective May 1, 2005. The content of those amendments is included in Item 2 to provide an opportunity for public comment.

Additionally, this rule making incorporates a change in licensing exemption resulting from federal court action and changes which reflect revised interpretation of the Iowa Code and current practice in the administration of the licensing program.

The exemption to licensure in Item 1 is the result of two federal court cases which held that a state may not subject federal contractors to licensing requirements which give the state a virtual power of review over the federal determination of responsibility and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder.

The amendments previously adopted through emergency procedures that delete the requirement for a written examination and a reference to the examination are contained in Item 2. Also included in Item 2 is the reduction in time from one year to six months for a license application to be deemed abandoned.

Amendments in Item 3 reflect current practice in classifying the existence of domestic abuse protection orders, inclusion on any sex offender registry, and arrest warrants as elements to be considered when determining moral character.

Changes in Items 4 and 7 reflect the current practices of the Department in administering Iowa Code chapter 80A. Item 4 reclassifies the act of taking tickets from a licensed to an unlicensed activity. Item 7 provides for the temporary denial or suspension of a licensee or employee or applicant thereof when there is pending action that could disqualify the licensee or employee.

Item 5 allows the Department to retain license fees for an abandoned license application. Item 6 reduces the number of data elements required on an employee ID card.

A public hearing on these proposed amendments will be held on July 1, 2005, at 10 a.m. in the Third Floor Conference Room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515)281-5524; or by electronic mail at admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated above by 4:30 p.m. on July 1, 2005, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on July 1, 2005.

These amendments are intended to implement Iowa Code chapter 80A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 2.3(1) as follows:

2.3(1) An officer or employee of the United States, or a state, or a political subdivision of the United States or of a state while the officer or employee is engaged in the performance of official duties *or an employee of a contractor or subcontractor with a federal agency while performing duties pursuant to a contract with the federal agency.*

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 2. Amend rule 661—2.4(80A) as follows:

Amend subrule 2.4(5) as follows:

2.4(5) Abandonment of applications. If an applicant for an agency license fails to complete the application within ~~one year~~ *six months* after it has been filed, ~~[or fails to take and pass the examination within a six-month period after becoming eligible,]*~~ the application shall be deemed abandoned. Any application submitted subsequent to the abandonment of a former application shall be treated as a new application, and must be filed in accordance with subrule 2.4(4).

Rescind subrules **2.4(7)**, **2.4(8)**, **2.4(9)** and **2.4(10)**.*

ITEM 3. Amend subrule **2.5(6)** by adding the following new paragraphs “i,” “j,” and “k”:

i. The applicant's being subject to any court order that restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, and includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child, or explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury;

j. The applicant's being a registered sex offender in any jurisdiction;

k. The applicant's being the subject of any arrest warrant, mittimus or other court order for detention in any jurisdiction.

ITEM 4. Amend rule 661—2.6(80A), introductory paragraph, as follows:

661—2.6(80A) ID cards. Each person employed by and engaged in the business of a licensed bail enforcement, private investigative or private security agency must obtain an employee ID card from the department and must meet the standards established in rule 661—2.5(80A). However, applicants for employee ID cards are not required to comply with surety bond or proof of financial responsibility requirements as those requirements have already been met by the licensed agency. For purposes of this rule, an employee who is required to obtain an ID card from the department is an agent or employee of a licensed agency who is engaged in the activities of the business which render it subject to the regulation of Iowa Code chapter 80A. Employees who are engaged exclusively in the unregulated activities of a licensed agency are considered exempt from this standard. Such exempt activities include clerical work, dispatching, building maintenance, vehicle maintenance, payroll and other financial processing, ticket selling *and taking tickets*, parking cars and other activities that do not provide direct security services and that are generally performed away from a contracted job site. ~~The act of taking tickets is considered a regulated security activity.~~

ITEM 5. Amend subrule 2.7(1) as follows:

2.7(1) A fee of \$100 ~~must~~ *shall* accompany each application for a bail enforcement, private investigative or private security license. If the application is approved, the money shall be applied to the license fee, but if the application is disapproved, the deposited application fee shall be refunded to the applicant. Application fees shall not be refunded *for abandoned applications described in subrule 2.4(5) or for canceled, suspended or revoked licenses.*

ITEM 6. Amend subrule 2.11(1) as follows:

2.11(1) The employee ID card issued by the commissioner shall include: *the employee's name and color photograph, agency name and number, type of business, date of issuance and ID card number.*

Full legal name	Color of eyes
Date of birth	Hair color
Address	Agency name
Sex	Type of business
Height	Agency number
Weight	Date of issuance
1" × 1" color photo	

This ID card is invalid without the commissioner's signature and the department's seal. The ID card shall be evidence that the holder is duly authorized to work for the licensed agency. The holder shall have this card in the holder's possession at all times when acting within the scope of employment. Failure to do so may result in suspension or revocation of the ID card or the agency license. This ID card shall remain the department's property. When any person to whom a card is issued terminates the person's position for any reason, the card must be surrendered to the commissioner within seven days. In the event of loss, destruction, or theft of this card, the licensee shall within five days of such discovery send to the commissioner a written report that describes the circumstances surrounding the loss, destruction, or theft. If the agency license has been terminated or revoked, the agency must return the license and all ID cards to the commissioner within seven days. The penalty for any knowing or willful misconduct in the use of the ID card may be revocation of the ID card or the agency license or both, depending on the nature and degree of the misconduct.

The fee for each application form (Form #PD2) for an original, temporary, or replacement employee ID card is \$10. The fee is refundable for blank unused forms returned to the department.

A nonrefundable fee to cover the cost of processing fingerprint cards through the FBI shall be submitted with each new application for an employee ID card. If fingerprints are rejected as unreadable the first time they are submitted, they may be resubmitted once for no additional fee. If fingerprints are submitted twice and both submissions are rejected as unreadable, subsequent submissions shall require additional processing fees, which shall be included with the submissions.

ITEM 7. Amend subrule 2.16(5) as follows:

2.16(5) Temporary denial or suspension. ~~A~~ *An agency license or employee ID card* shall be temporarily denied or suspended until the outcome of any pending action is known if the result of that action would disqualify the applicant ~~or~~ licensee *or employee.*

* See **ARC 4180B**, IAB 5/25/05, for amendments previously Adopted and Filed Emergency.

ARC 4228B**PUBLIC SAFETY
DEPARTMENT[661]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby gives Notice of Intended Action to adopt new Chapter 174, “Retail Sales of Pseudoephedrine,” Iowa Administrative Code.

2005 Iowa Acts, Senate File 169, provides for the regulation of substances which are precursors to amphetamine and methamphetamine, including pseudoephedrine. Pseudoephedrine is widely used in medications intended for treating colds, allergies, and hay fever. It is also used in the manufacture of methamphetamine. 2005 Iowa Acts, Senate File 169, section 3, requires retail outlets which sell products containing pseudoephedrine to maintain a logbook of sales of these products, in which the following items are recorded for each such purchase: (1) purchaser’s signature, “legibly” written, and (2) purchaser’s printed name and address. The statute further provides that “the logbook may be kept in electronic format upon approval of the department of public safety.” These rules provide the criteria for such approval. Also, a provision included in section 4 of 2005 Iowa Acts, Senate File 169, requires that anytime a city or county imposes a civil penalty upon a retailer for violating the provisions of the bill, a report must be made to the Department of Public Safety within 30 days. These rules include procedures for making the required reports. These provisions took effect May 21, 2005, which is 60 days after enactment of the statute.

A public hearing on this proposed amendment will be held on July 1, 2005, at 9:30 a.m. in the third floor conference room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail; by telephone at (515)281-5524; or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding this proposed amendment may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on July 1, 2005, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department of Public Safety by 4:30 p.m. on July 1, 2005.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 4227B**, effective May 21, 2005, in order to be in effect when the statutory provisions implemented by these rules became effective. The content of that submission is incorporated by reference.

These rules are intended to implement 2005 Iowa Acts, Senate File 169.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be

available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

ARC 4215B**REAL ESTATE COMMISSION[193E]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 543B.9 and 543B.18, the Real Estate Commission hereby gives Notice of Intended Action to amend Chapter 3, “Broker License,” and Chapter 4, “Salesperson License,” Iowa Administrative Code.

New subrules 3.3(3), 3.6(5), 4.3(3), and 4.6(5) are added to provide the Commission the authority to initiate a contested case to challenge qualifications for licensure after administratively processing an application. The language is the same or similar to current renewal language in subrules 3.5(5) and 4.5(5). One word is added to the catchwords of rule 4.3(543B) for consistency and clarification.

A public hearing will be held on June 28, 2005, at 10 a.m. in the Second Floor Professional Licensing Conference Room, 1920 SE Hulsizer, Ankeny, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Consideration will be given to all written suggestions or comments received before the end of the business day on June 28, 2005. Comments should be addressed to Roger Hansen, Executive Officer, Iowa Real Estate Commission, 1920 SE Hulsizer, Ankeny, Iowa 50021; or faxed to (515) 281-7411. E-mail may be sent to roger.hansen@iowa.gov.

These amendments are intended to implement Iowa Code sections 543B.9 and 543B.18.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 193E—3.3(543B) by adopting the following **new** subrule:

3.3(3) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee’s qualifications for licensure.

ITEM 2. Amend rule 193E—3.6(272C,543B) by adopting the following **new** subrule:

REAL ESTATE COMMISSION[193E](cont'd)

3.6(5) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

ITEM 3. Amend rule 193E—4.3(543B), catchwords, as follows:

193E—4.3(543B) Application for salesperson license.

ITEM 4. Amend rule 193E—4.3(543B) by adopting the following **new** subrule:

4.3(3) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

ITEM 5. Amend rule 193E—4.6(272C,543B) by adopting the following **new** subrule:

4.6(5) Denial of application. An application may be denied on the grounds provided in Iowa Code chapter 543B and in rule 193—7.39(546,272C). The administrative processing of an application shall not prevent the later initiation of a contested case to challenge a licensee's qualifications for licensure.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

June 1, 2004 — June 30, 2004	6.25%
July 1, 2004 — July 31, 2004	6.75%
August 1, 2004 — August 31, 2004	6.75%
September 1, 2004 — September 30, 2004	6.50%
October 1, 2004 — October 31, 2004	6.25%
November 1, 2004 — November 30, 2004	6.25%
December 1, 2004 — December 31, 2004	6.00%
January 1, 2005 — January 31, 2005	6.25%
February 1, 2005 — February 28, 2005	6.25%
March 1, 2005 — March 31, 2005	6.25%
April 1, 2005 — April 30, 2005	6.25%
May 1, 2005 — May 31, 2005	6.50%
June 1, 2005 — June 30, 2005	6.25%

UTILITIES DIVISION

Notice of Deregulation

The Utilities Board (Board) hereby gives notice that on May 13, 2005, the Board issued an order in Docket No. INU-05-2, In re: Deregulation of Single Line Flat-Rate Local Exchange Services in Competitive Markets, "Order Initiating Notice and Comment Proceeding," pursuant to Iowa Code § 476.1D, as amended by 2005 Iowa Acts, House File 277, to consider whether single line flat-rate local exchange service in 31 Iowa exchanges should be deregulated.

Copies of the Board's complete order initiating notice and comment proceeding may be obtained from the Board by calling (515)281-6240 or on the Board's Web site, <http://www.state.ia.us/iub>.

Any interested person may file, on or before June 13, 2005, a statement of position concerning the possible deregulation of single line flat-rate local exchange service in any of the 31 Iowa exchanges. Statements of position must substantially comply with 199 IAC 2.2(2). Ten copies must be filed with the original. All written statements should clearly state the author's name and address and should make specific reference to Docket No. INU-05-2.

Any person filing a statement of position may file a counterstatement replying to the comments of other participants no later than July 18, 2005. Ten copies must be filed with the original and copies must be served upon all participants filing statements to which the counterstatement responds. Counterstatements must substantially comply with 199 IAC 2.2(3).

All statements and counterstatements shall be sworn and directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation is scheduled, pursuant to 199 IAC 5.3(4) and 5.5(476), for the purpose of taking sworn testimony concerning the statements and counterstatements. The oral presentation shall be held August 16, 2005, beginning at 10 a.m. in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. All persons filing written statements shall have at least one witness available at the oral presentation who may be cross-examined on the subject matter of the written statement. Cross-examination may be by the Board, the Consumer Advocate Division of the Department of Justice, and other participants as the Board may deem appropriate to develop the record fully. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

ARC 4223B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44, the Department of Human Services rescinds Chapter 180, "Respite Care Services," and amends Chapter 182, "Family-Centered Services," Iowa Administrative Code.

These amendments end the family-centered respite care services program for children with mental retardation or other developmental disabilities by rescinding Chapter 180. This program was established in 1992 to offer periodic respite for the primary caregivers of children whose disability placed them at risk of child abuse or placement outside the family home. Under the program, families could receive substitute care for their child, equivalent to one weekend per month, to relieve stress on the family.

As part of the redesign of the child welfare system mandated by 2003 Iowa Acts, chapter 178, the Department is focusing its resources on children and families that are most at risk of child maltreatment. Many of the families that have used the family-centered respite services will no longer be eligible for family-centered services under the child welfare redesign because there are no current child abuse assessments on the children and they are not under court jurisdiction.

Services for this population are now available through other programs, primarily the Medicaid home- and community-based mental retardation waiver program. Participation in the waiver program is often a more desirable option for families, since the waiver program offers a wider variety of supports and does not require the family to request services through the child welfare system. Utilization of family-centered respite care services has diminished over time to an extremely low level, and only a few providers now offer the service.

These amendments do not provide for waivers because they rescind the affected rules.

The Council on Human Services adopted these amendments May 11, 2005.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2003 Iowa Acts, chapter 178, section 44, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2003 Iowa Acts, chapter 178, section 44.

These amendments are also published herein under Notice of Intended Action as **ARC 4224B** to allow for public comment.

These amendments are intended to implement Iowa Code section 234.6 and 2003 Iowa Acts, chapter 178, section 44.

These amendments shall become effective July 1, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Rescind and reserve **441—Chapter 180**.

ITEM 2. Amend rule **441—182.1(234)**, definition of "supportive services," by rescinding numbered paragraph "6" and renumbering paragraph "7" as "6."

[Filed Emergency 5/18/05, effective 7/1/05]

[Published 6/8/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/8/05.

ARC 4214B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby adopts new Chapter 48, "Inspection of Permanently Moored Vessels," Iowa Administrative Code.

The adoption of this new chapter is mandated by Iowa Code section 99F.7(14). This new chapter establishes procedures for compliance with the requirements of Iowa Code sections 99F.7(14) and 462A.20 for the inspection of excursion boats used for gambling that are removed from navigation and designated as permanently moored vessels (PMVs) by the United States Coast Guard.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 2, 2005, as **ARC 4031B**. A public hearing was held on March 22, 2005. Oral and written comments were received and considered.

After further review and discussion with interested parties, it was determined that the inspection program can best be accomplished by entering into a contract with an inspection coordinator to conduct all inspections in the state and to administer the PMV inspection program. As a result, new rule 571—48.5(462A), statewide inspection contract, has been added and other related changes have been made.

This new chapter is Adopted and Filed Emergency After Notice and became effective upon filing pursuant to Iowa Code section 17A.5(2)"b"(2). The Commission has determined that the adoption of this new chapter is required by statute, enacted in 2004, and the chapter's immediate effective date is necessary to carry out the purposes of the statute. The Commission further finds that Iowa Code section 99F.7(14) is intended to confer a benefit or remove a restriction on the public or some segment thereof.

These rules are intended to implement Iowa Code sections 99F.7(14) and 462A.20.

These rules became effective on May 13, 2005.

The following amendment is adopted.

Adopt the following **new** chapter:

CHAPTER 48**INSPECTION OF PERMANENTLY
MOORED VESSELS**

571—48.1(462A) Purpose. This chapter is intended to establish the procedures for compliance with the inspection requirements of Iowa Code sections 99F.7(14) and 462A.20 for the inspection of excursion boats used for gambling that have been removed from navigation and designated as permanently moored vessels by the United States Coast Guard.

NATURAL RESOURCE COMMISSION[571](cont'd)

571—48.2(462A) Definitions.

“Commission” means the Iowa racing and gaming commission.

“Correction report” means a written requirement issued by, or on behalf of, the department and directing a PMV operator to correct a safety or maritime security deficiency within a specified period of time.

“Critical systems” on a PMV means fire safety systems, systems that protect against flooding and progressive flooding, emergency power systems, emergency lighting systems, emergency ventilation shutdown systems, and fuel and sewage discharge prevention systems.

“Department” means the Iowa department of natural resources.

“Inspection program coordinator” means a third-party contractor retained pursuant to 567—48.5(462A) to conduct inspections on PMVs and administer the PMV inspection program.

“Permanently moored vessel” or “PMV” means an excursion boat used for gambling, which is removed from navigation and defined as a vessel under Title 46, Code of Federal Regulations, Subchapter K or H, that would have previously required a United States Coast Guard Certificate of Inspection.

571—48.3(462A) Inspection requirements. All PMVs shall be inspected by a qualified inspector to determine compliance with the “State of Iowa Permanently Moored Vessel Inspection Requirements,” 2005, as adopted by reference herein.

571—48.4(462A) Inspectors. Inspections of PMVs shall be conducted by a person or persons meeting the criteria set forth in this rule.

48.4(1) Qualifications. An inspector shall:

- a. Have prior experience as a U.S. Coast Guard marine inspector or as a classification society (recognized by the U.S. Coast Guard) surveyor; or
- b. Be a classification surveyor acting on behalf of a classification society; or
- c. Be a professional engineer licensed by one of the 50 states; or
- d. Be a professional naval architect or marine engineer.

48.4(2) Minimum documented work experience. An inspector shall:

- a. Have obtained three years’ experience in the examination of steel or aluminum vessels of similar design; and
- b. Be familiar with the regulations and standards under which the PMV was built; and
- c. Be familiar with permanent mooring arrangements and ship structures supporting the same; and
- d. Have experience in marine emergency response operations and planning that is sufficient for the individual to competently review emergency action plans required by these rules; and
- e. Have experience in the investigation of reportable occurrences as described in the “State of Iowa Permanently Moored Vessel Inspection Requirements,” 2005.

571—48.5(462A) Statewide inspection contract. If the department determines that the administration of this chapter could best be effectuated through a contract with one or more third parties, the state may award such a contract or contracts pursuant to the provisions of 561—Chapter 8, as adopted by reference in rule 571—8.1(17A).

48.5(1) A statewide inspection contract shall authorize an inspection program coordinator to conduct the inspections required by this chapter, prepare and submit the required re-

ports, and engage in such other activities as may be necessary for the administration of the PMV inspection program.

48.5(2) A contract entered into pursuant to this rule shall establish fees to be paid by PMV operators to the inspection program coordinator for the inspection of PMVs. There shall be a fixed fee established by contract for inspections and administration of the program by the inspection program coordinator. The contract may establish additional fees to be charged by the inspection program coordinator for work related to addressing deficiencies or other noncompliance by a PMV operator. Said fees shall be the sole source of payment to the inspection program coordinator.

48.5(3) In the event that a statewide inspection contract is executed by the department, all submissions required by these rules shall be sent to the inspection program coordinator established by the contract.

571—48.6(462A) Submission. Any person making application to the commission for the licensing of a PMV shall submit proof to the department that the PMV has been inspected by a qualified inspector and that the PMV satisfies all of the requirements of the “State of Iowa Permanently Moored Vessel Inspection Requirements,” 2005. All PMVs licensed pursuant to Iowa Code chapter 99F shall submit to the department quarterly and annual reports in compliance with all of the requirements of the “State of Iowa Permanently Moored Vessel Inspection Requirements,” 2005.

571—48.7(462A) Notification to the commission. If a PMV operator fails to cure an inadequacy in a required inspection report or to comply with a correction report for a critical system or maritime security deficiency within the applicable time period, a determination of inadequacy shall be forwarded to the commission and shall be subject to the appeal and contested case procedures of the department as established by 561—Chapter 7 and adopted by reference at 571—7.1(17A).

48.7(1) Inspection reports. The department shall, within 60 days of receipt of an initial inspection, quarterly or annual report, determine the adequacy of the report and shall notify the submitting party of such determination. The submitting party shall be given a minimum of 60 days to cure any inadequacy not involving critical systems or maritime security.

48.7(2) Correction reports. To minimize safety and maritime security risks to the public, the environment and the PMV itself, deficiencies found in critical systems or security systems shall be immediately reported to the department. After consulting with the PMV operator, the department may issue a correction report if the deficiency was not immediately corrected. The correction report will direct the PMV operator to take corrective action within a specific period of time that is based on the nature and severity of the deficiency.

These rules are intended to implement Iowa Code sections 99F.7(14) and 462A.20.

[Filed Emergency After Notice 5/13/05, effective 5/13/05]

[Published 6/8/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/8/05.

ARC 4227B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby adopts new Chapter 174, "Retail Sales of Pseudoephedrine," Iowa Administrative Code.

2005 Iowa Acts, Senate File 169, provides for the regulation of substances which are precursors to amphetamine and methamphetamine, including pseudoephedrine. Pseudoephedrine is widely used in medications intended for treating colds, allergies, and hay fever. It is also used in the manufacture of methamphetamine. 2005 Iowa Acts, Senate File 169, section 3, requires retail outlets which sell products containing pseudoephedrine to maintain a logbook of sales of these products, in which the following items are recorded for each such purchase: (1) purchaser's signature, "legibly" written, and (2) purchaser's printed name and address. The statute further provides that "the logbook may be kept in electronic format upon approval of the department of public safety." These rules provide the criteria for such approval. Also, a provision included in section 4 of 2005 Iowa Acts, Senate File 169, requires that anytime a city or county imposes a civil penalty upon a retailer for violating the provisions of the bill, a report must be made to the Department of Public Safety within 30 days. These rules include procedures for making the required reports. These provisions took effect May 21, 2005, which is 60 days after enactment of the statute.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation prior to the adoption of this amendment are impracticable, as it is desirable that the requirements for electronic logbooks of retail pseudoephedrine purchases and for reporting of the imposition of civil penalties to the Department be established by May 21, 2005, the date on which 2005 Iowa Acts, Senate File 169, became effective.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective May 21, 2005, after filing with the Administrative Rules Coordinator. This amendment confers a benefit upon the public by establishing requirements for electronic tracking of retail pseudoephedrine sales, which may be more efficient and less costly for some retailers than would be the maintenance of traditional, paper logbooks, and by providing procedures for required reporting on the imposition of civil penalties on retailers of products containing pseudoephedrine, which will reduce any possible confusion regarding when and how cities and counties are to report these events.

This amendment is also published herein under Notice of Intended Action as **ARC 4228B** to allow an opportunity for public comment, including a public hearing, which will be held at 9:30 a.m. on July 1, 2005, in the third floor conference room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319.

These rules became effective on May 21, 2005.

These rules are intended to implement 2005 Iowa Acts, Senate File 169.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following new chapter is adopted.

CHAPTER 174**RETAIL SALES OF PSEUDOEPHEDRINE**

661—174.1(81GA,SF169) Electronic logbooks. A logbook of retail sales of products containing pseudoephedrine, as required in 2005 Iowa Acts, Senate File 169, may be recorded in any electronic format, provided that the retailer maintaining the logbook provides to any peace officer a printed copy of the information required to be maintained in the same manner as would be provided if the logbook were maintained on paper.

NOTE: Information required to be recorded in the logbook includes the legible signature of the purchaser and the printed name and address of the purchaser.

661—174.2(81GA,SF169) Reporting of civil penalties. Within 30 days of the assessment of a civil penalty upon a retailer or employee of a retailer of products containing pseudoephedrine for a violation of the provisions of 2005 Iowa Acts, Senate File 169, the city or county which has enforced the civil penalty shall report the following information to the Director, Iowa Division of Narcotics Enforcement, Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319:

1. Name and address of the retailer.
2. Name and birth date of the employee, if the civil penalty was assessed against an employee. If the assessment was against more than one employee, the name and birth date of each employee subject to the assessment shall be reported.
3. Date of the violation.
4. Description of the violation.
5. Amount of the civil penalty assessed.

These rules are intended to implement 2005 Iowa Acts, Senate File 169.

[Filed Emergency 5/18/05, effective 5/21/05]

[Published 6/8/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/8/05.

ARC 4221B**CAPITAL INVESTMENT BOARD,
IOWA[123]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby adopts amendments to Chapter 4, "Investment Tax Credits Relating to Investments in a Fund of Funds Organized by the Iowa Capital Investment Corporation," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVII, No. 21, p. 1344, on April 13, 2005, as **ARC 4113B** and the rules were simultaneously Adopted and Filed Emergency as **ARC 4114B**.

Item 1 amends rule 123—4.1(15E) to clarify that contingent tax credits are available to designated investors in the Iowa fund of funds.

Item 2 amends rule 123—4.2(15E) to include changes to definitions.

Item 3 amends rule 123—4.3(15E) to include changes regarding the report issued by the Iowa Capital Investment Corporation.

Item 4 amends rule 123—4.4(15E) to include changes regarding the allocation and issuance of tax credit certificates.

Item 5 amends rule 123—4.5(15E) to include changes regarding the procedures for the verification of tax credits.

Item 6 amends rule 123—4.6(15E) to include changes regarding the contractual nature of the tax credit certificate and the irrevocability of these tax credits.

Item 7 amends rule 123—4.7(15E) to include changes regarding the transfer of the tax credit certificates.

Item 8 amends rule 123—4.8(15E) to include changes regarding the cancellation of tax credits upon receipt of the scheduled rate of return by designated investors.

Item 9 amends rule 123—4.9(15E) to include changes regarding the time frame for replacing lost or mutilated tax credit certificates.

Item 10 amends rule 123—4.10(15E) to include changes regarding claiming the tax credits.

Item 11 rescinds rules 123—4.13(15E) through 123—4.16(15E), which are now obsolete due to the anticipated structure of the Iowa fund of funds.

Item 12 amends the implementation clause for 123—Chapter 4.

These amendments were filed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

These amendments will become effective July 13, 2005, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2005 Iowa Acts, Senate File 114.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [4.1 to 4.10, 4.13 to 4.16] is being omitted.

These amendments are identical to those published under Notice as **ARC 4113B** and Adopted and Filed Emergency as **ARC 4114B**, IAB 4/13/05.

[Filed 5/18/05, effective 7/13/05]
[Published 6/8/05]

[For replacement pages for IAC, see IAC Supplement 6/8/05.]

ARC 4238B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby adopts amendments to Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 21, "Compliance," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," and Chapter 25, "Measurement of Emissions," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 16, 2005, as **ARC 4059B**. A public hearing was held on April 19, 2005. No comments were received at the public hearing. Two written comments were received prior to the close of the public comment period.

The submitted comments and the Department's response to the comments are summarized in the responsiveness summary available from the Department. Two minor modifications were made from the amendments published under the Notice of Intended Action, as detailed in the paragraphs below that pertain to Items 33 and 34.

Item 1 amends the definitions in rule 567—20.2(455B) to add a definition of "untreated" as it applies to wood or wood products, seeds, pellets and other vegetative matter. This definition is being added to clarify that untreated wood includes only wood or wood products that have not been treated with compounds such as, but not limited to, paint, pigment-stain, adhesive, varnish, lacquer, or resin, or that have not been pressure treated with compounds such as, but not limited to, chromate copper acetate, pentachlorophenol or creosote. Untreated pellets, seeds or vegetative matter includes only pellets, seeds or other vegetative matter that has not been treated with pesticide or fungicide.

Item 2 amends the definition of "volatile organic compound," also known as VOC, to reflect the most recent Code of Federal Regulations (CFR) amendment date. On November 29, 2004, the U.S. Environmental Protection Agency (EPA) amended the federal rules to delist four substances previously classified as VOCs. These four substances are HFE-7000, HFE-7500, HFC 227ea and methyl formate. In a separate action on that date, EPA revised the VOC classification for an additional substance, t-Butyl Acetate (also known as TBAC). This revision modifies the definition of VOC to clarify that TBAC will not be a VOC for purposes of VOC emissions limitations or VOC material content requirements, but must be reported separately for purposes of all record keeping, photochemical dispersion modeling, emissions reporting, and emissions inventory requirements which apply to VOCs.

Item 3 amends the variance paragraph in 567—Chapter 21 by deleting the word "notwithstanding," and rewording the

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paragraph to more clearly state that the Director may not grant variances for projects subject to certain federal requirements.

Both the written comments were made in regard to this item. The Department agrees with the commenters' contentions that the current rule could be construed to allow variances from federal requirements, such as Prevention of Significant Deterioration (PSD). Allowing variances from federal requirements was not the Department's intent, and is not consistent with the Department's past and current practice for granting variances.

The current variance rules for testing alternative fuels were published in the Iowa Administrative Bulletin as **ARC 2774B** and were incorporated into the Iowa Administrative Code on September 17, 2003. EPA Region VII will not approve those September 2003 amendments into Iowa's State Implementation Plan (SIP), and requested that the Department proceed with a rule making to correct this language. The Department proposed the amendments in the Notice of Intended Action to make clear that the Department cannot grant variances from certain federal requirements. The Department intends to proceed with the amendments as proposed.

Item 4 amends the construction permit application submittal requirements to clarify the requirements for engineers submitting applications to the Department. This amendment replaces the word "registered" with the word "licensed" in order to be consistent with changes made to Iowa Code section 542B.1 in 1995. The amendment also affirms that the requirements for a professional, licensed engineer do not apply to full-time employees of the company submitting the application, as provided for in Iowa Code section 542B.26.

Item 5 clarifies the requirements for notification of ownership change for construction permits by adding the mailing address for the Department's Air Quality Bureau.

Item 6 updates the definitions for the Title V operating permit program. References to the CFR are updated to reflect the most current amendment date for the applicable part. The reference to 40 CFR Part 75, Appendix H, under the definition of "EPA reference method," is deleted because the original reference method in the federal regulations no longer exists and is now reserved. Additionally, the definition for "hazardous air pollutant" is updated to reflect the EPA amendment of November 29, 2004, which deleted the substance ethylene glycol monobutyl ether from the list of hazardous air pollutants.

Item 7 updates the subrule for Title V deferred stationary sources to reflect the most current CFR amendment dates.

Item 8 amends the exemptions to Title V requirements to reflect the most current CFR amendment dates.

Item 9 amends the subrule for submitting Title V permit applications to reduce the maximum number of copies required from four copies to three copies. The amendment also specifies to which office each copy of the application should be sent.

Item 10 amends the subparagraph for reopenings of Title V permits to update the CFR reference to the most current amendment date.

Item 11 adopts new definitions to reflect the current amendment dates for six CFR parts that are cited frequently in the acid rain rules: 40 CFR Parts 72, 73, 75, 76, 77 and 78. These citations are now set out in the definitions. Future changes to these citations will now be clearly noted in the definitions and will allow for fewer corrections when citations are amended in the future.

Item 12 amends the definitions for the acid rain program to reflect the most current amendment date for CFR references.

Item 13 amends the acid rain paragraph for affected units to reflect the most recent CFR amendment date.

Item 14 amends the acid rain subrule for applicability determinations to update the CFR amendment date.

Item 15 amends the acid rain subrule for new unit exemptions to reflect the most recent CFR amendment date.

Item 16 amends the acid rain subrule for retired unit exemptions to reflect the current CFR amendment date.

Item 17 amends the acid rain sulfur dioxide requirements to update the CFR amendment date.

Item 18 amends the acid rain subrule for nitrogen oxides with the most recent CFR amendment dates.

Item 19 amends the acid rain paragraph for violations to reflect the current CFR amendment dates.

Item 20 amends the subrule for submitting acid rain applications to reduce the maximum number of required copies from four copies to three copies.

Item 21 amends the paragraph for sulfur dioxide allowances to update the CFR amendment dates.

Item 22 amends the paragraph for nitrogen oxide compliance options by deleting one of the CFR sections cited. 40 CFR Section 76.16 was removed from the federal regulations.

Item 23 amends the rule for acid rain permit shields to reflect the most recent CFR amendment dates.

Item 24 amends the acid rain subrule for permit appeals to reflect the current CFR amendment dates.

Item 25 amends the acid rain subrule for recordation of allowance tracking to update the CFR amendment date.

Item 26 amends the acid rain subrule for applicability and deadlines to reflect the most recent CFR amendment date.

Item 27 amends the acid rain rule for sulfur dioxide opt-ins to reflect the current CFR amendment date.

Item 28 adds a new rule to the rules for voluntary operating permits to establish the notification requirements for change in ownership at subject facilities.

Item 29 adds a new subrule to the rules for operating permits by rule for small sources to specify the notification requirements for change in ownership at subject facilities.

Item 30 amends the subrule in Chapter 23 for new source performance standards (commonly known as NSPS) to reflect the most current amendment date for 40 CFR Part 60. EPA amended the standards for stationary gas turbines (40 CFR Part 60, Subpart GG) to codify several alternative testing methods that had been routinely approved by EPA and to reflect changes that have occurred in nitrogen oxide emission control technologies and turbine design since the standards were originally promulgated.

Item 31 amends the subrule in Chapter 23 for emission standards for hazardous air pollutants to reflect the most current amendment date for 40 CFR Part 61. The amendments to the federal regulations consisted of minor corrections, additions and administrative changes.

Item 32 amends the subrule in Chapter 23 for emission standards for hazardous air pollutants (commonly known as NESHAPs) for source categories to update it to reflect recent amendments to 40 CFR Part 63. The substantive changes to 40 CFR Part 63 include the following:

EPA amended the NESHAP commonly known as Hazardous Organic NESHAP or HON (40 CFR Part 63, Subpart G) to allow vapor balancing in conjunction with the use of pressure setting to comply with the storage tank control requirements of the standards.

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EPA amended the NESHAP for chrome emissions from hard and decorative chromium electroplating and chromium anodizing tanks (40 CFR Part 63, Subpart N) to amend the emission limits, definitions, compliance provisions and performance test requirements.

For the NESHAP for solvent extraction for vegetable oil production (40 CFR Part 63, Subpart GGGG), EPA amended the compliance requirements for vegetable oil production processes that exclusively use a qualifying low-hazardous air pollutant (HAP) extraction process. Only the necessary record-keeping and reporting requirements need to be completed to demonstrate compliance with the NESHAP.

For the stationary combustion turbine NESHAP (40 CFR Part 63, Subpart YYYY), EPA issued a stay on the effectiveness of the rule requirement for two subcategories of turbines: lean premix gas-fired turbines and diffusion flame gas-fired turbines.

Item 33 amends subrule 23.1(4) to adopt four new federal NESHAPs for source categories. These new NESHAP source categories are: plywood and composite wood products; surface coating of plastic parts and products; stationary reciprocating internal combustion engines; and industrial, commercial and institutional boilers and process heaters. In the Notice of Intended Action, the acronym for the NESHAP for reciprocating internal combustion engines was published as RICEs. EPA's official acronym for reciprocating internal combustion engines is RICE. The acronym is corrected to indicate RICE in the adopted amendments.

Item 34 updates the subrule in Chapter 25 for performance evaluations of continuous monitoring systems to reflect the most current CFR amendment dates. The reference to 40 CFR Part 75, Appendix H, is deleted because the original reference method in the federal regulations no longer exists and is now reserved. In the adopted amendments, an additional modification is being made to reflect the most current amendment date for 40 CFR Part 60, Appendix A. The amendment date of March 12, 1996, has been changed to October 17, 2000.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments will become effective July 13, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 20 to 23, 25] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4059B**, IAB 3/16/05.

[Filed 5/18/05, effective 7/13/05]

[Published 6/8/05]

[For replacement pages for IAC, see IAC Supplement 6/8/05.]

ARC 4239B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.304, 455B.306 and 455D.7, the Environmental Protection Commission hereby amends Chapter 101, "Solid Waste Compre-

hensive Planning Requirements," Iowa Administrative Code.

These amendments, which pertain to solid waste comprehensive planning requirements, incorporate into Chapter 101 requirements from the document titled "Guidelines for Solid Waste Comprehensive Planning: Integrated Solid Waste Management Systems" (September 1990), as revised March 19, 2001, which had been previously adopted by reference in Chapter 101. These amendments update and consolidate the requirements into this chapter.

The proposed amendments in the Notice of Intended Action were written by the Department with the input of an advisory committee. This advisory committee consisted of representatives from the Iowa Society of Solid Waste Operators (ISOSWO), Iowa Recycling Association (IRA), private consultants, landfill operators and other interested parties.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 16, 2005, as **ARC 4062B**. A public hearing was held on April 6, 2005.

Comments were received and may be found in the responsiveness summary which is available from Mark Warren, Energy and Waste Management Bureau, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319; telephone (515)281-4968 or at <http://www.iowadnr.com/epc/05may16a.html>.

In response to public comment, the following changes from the Notice have been made:

In Item 8, subrule 101.7(2), introductory paragraph, the phrase "comprehensive plan submittals" has been changed to "comprehensive plan update" and the following new language has been added: "since information on each planning area's base year tonnage is presented in prior comprehensive plan submittals." The introductory paragraph now reads as follows:

"101.7(2) Planning agencies must document the amount of waste disposed of in both the base year and the most current fiscal year where a complete data set is available. If no changes have occurred within the planning area that would affect the base year, then only data for the most current fiscal year for which a complete data set is available need to be presented in the comprehensive plan update, since information on each planning area's base year tonnage is presented in prior comprehensive plan submittals. Tonnage data sources that each planning agency must identify include, but are not limited to:"

In Item 10, in 567—rule 101.9(455B,455D), the last sentence, as published in the Notice, has been deleted. The rule now reads as follows:

"567—101.9(455B,455D) Review of initial comprehensive plans and comprehensive plan updates. Initial comprehensive plans and comprehensive plan updates submitted in accordance with rule 567—101.12(455B,455D) shall be reviewed by the department for compliance with this chapter. The director may reject, suggest modification of, or approve a comprehensive plan based upon criteria outlined in rule 567—101.12(455B,455D)."

In Item 13, in subparagraphs 101.12(1)"h"(2) and 101.12(2)"g"(2), the conjunction "and" has been changed to "or" in the phrase "proper management of tires and household appliances." Each subparagraph now reads as follows:

"(2) A list of collectors/recyclers used by the permitted sanitary disposal project(s) for the proper management of tires or household appliances."

Nonsubstantive technical changes have also been made for clarification.

These amendments are intended to implement Iowa Code sections 455B.304, 455B.306 and 455D.7.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These amendments will become effective July 13, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [101.1 to 101.13] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4062B**, IAB 3/16/05.

[Filed 5/18/05, effective 7/13/05]
[Published 6/8/05]

[For replacement pages for IAC, see IAC Supplement 6/8/05.]

ARC 4222B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.8, 508.36, and 508.37, the Insurance Division hereby adopts new Chapter 92, "Universal Life Insurance," Iowa Administrative Code.

This new chapter supplements existing rules on life insurance policies in order to accommodate the development and issuance of universal life insurance plans.

Notice of Intended Action was published in the March 2, 2005, Iowa Administrative Bulletin as **ARC 4025B**. A public hearing was held at the offices of the Insurance Division at 10 a.m. on March 22, 2005. The adopted rules are identical to those published under Notice.

These rules will become effective July 13, 2005.

These rules are intended to implement Iowa Code sections 508.36 and 508.37.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 92] is being omitted. These rules are identical to those published under Notice as **ARC 4025B**, IAB 3/2/05.

[Filed 5/18/05, effective 7/13/05]
[Published 6/8/05]

[For replacement pages for IAC, see IAC Supplement 6/8/05.]

ARC 4234B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 51, "Game Management Areas," Iowa Administrative Code.

These rules establish regulations for management and public use of game management areas. This amendment clarifies the time by which portable blinds must be removed from game management areas.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 30, 2005, as **ARC 4084B**. A public hearing was held on April 19, 2005. There were no

comments on the proposed amendment. There were no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

This amendment shall become effective July 13, 2005.

The following amendment is adopted.

Amend subrule **51.5(2)**, paragraph "**b**," as follows:

b. Prohibited use. Portable blinds shall be prohibited from ~~one-half~~ *one* hour after sunset until midnight each day. Portable blinds which are built on, or are part of, a boat shall be considered as removed from an area when the boat and blind are tied up or moored at an approved access site. No boat shall be anchored away from shore and left unattended unless it is attached to a legal buoy.

[Filed 5/18/05, effective 7/13/05]
[Published 6/8/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/8/05.

ARC 4233B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

Chapter 94 gives the regulations for hunting deer and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation tag requirements. This amendment changes tagging regulations for the bow and late muzzleloader seasons to conform to the regulations for resident hunters.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 30, 2005, as **ARC 4086B**. A public hearing was held on April 19, 2005, in the Wallace State Office Building. No comments on the proposed rule were received during the public comment period. There are no changes from the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

This amendment shall become effective July 13, 2005.

The following amendment is adopted.

Rescind rule 571—94.4(483A) and adopt the following new rule in lieu thereof:

571—94.4(481A) Limits.

94.4(1) Bow season. The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

94.4(2) Muzzleloader season. The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

94.4(3) Regular gun seasons. The bag limit is one deer for each hunter in the party who has a valid deer transportation tag. The possession limit is one deer per license. "Possession" shall mean that the deer is in the possession of the per-

NATURAL RESOURCE COMMISSION[571](cont'd)

son whose license number matches the number of the transportation tag on the carcass of the deer.

94.4(4) Maximum annual possession limit. The maximum annual possession limit for a nonresident deer hunter is one deer for each legal license and transportation tag obtained.

[Filed 5/18/05, effective 7/13/05]

[Published 6/8/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/8/05.

ARC 4232B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 99, "Wild Turkey Fall Hunting by Residents," Iowa Administrative Code.

Chapter 99 sets forth rules for hunting wild turkeys during the fall and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take, and transportation tag requirements. These amendments change the number of licenses a hunter may have, add a new hunting zone in north-west Iowa, change the tagging requirements to conform to the spring turkey season and permit the use of dogs for fall turkey hunting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 30, 2005, as **ARC 4087B**. A public hearing was held on April 19, 2005. There was one minor wording change from the Notice of Intended Action for clarification purposes.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments shall become effective July 13, 2005. The following amendments are adopted.

ITEM 1. Rescind rule 571—99.2(481A) and adopt the following **new** rule in lieu thereof:

571—99.2(481A) Licenses.

99.2(1) Paid combination shotgun-or-archery licenses. Paid combination shotgun-or-archery licenses shall be valid for taking turkeys of either sex in the zone designated on the license.

99.2(2) Paid archery-only licenses. Paid archery-only licenses shall be valid statewide for taking turkeys of either sex.

99.2(3) Number of licenses. No one may apply for or obtain more than two wild turkey fall hunting licenses, whether free or paid, prior to November 1. A hunter may obtain no more than two combination shotgun-or-archery licenses, or two archery-only licenses, or one of each. Beginning November 1, a hunter may obtain an additional paid combination shotgun-or-archery license if quotas are not filled. One license of either type may be free to eligible landowners or tenants.

ITEM 2. Amend rule 571—99.4(481A) by adopting the following **new** subrule:

99.4(9) Zone 9. Zone 9 is that portion of Iowa bounded on the south by U.S. Highway 20 and on the east by U.S. Highway 69.

ITEM 3. Amend subrule **99.5(1)** by adopting the following **new** paragraph "i":

i. Zone 9. 200

ITEM 4. Amend subrule 99.8(2) as follows:

99.8(2) Prohibited devices. The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is ~~are~~ prohibited, ~~except that paraplegics.~~ *Paraplegics* and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord. "Bait" means grain, fruit, vegetables, nuts or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife.

ITEM 5. Rescind rule 571—99.10(481A) and adopt the following **new** rule in lieu thereof:

571—99.10(481A) Transportation tag. Immediately upon the killing of a wild turkey, the transportation tag issued with the license and bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of the turkey. The tag must be attached in such a manner that it cannot be removed without mutilating or destroying the tag. The tag must be attached before the carcass can be moved in any manner from the place of kill. The transportation tag shall remain affixed to the leg of the turkey until the turkey is processed for consumption. The leg that bears the tag must be attached to the carcass of any wild turkey being transported within the state during any wild turkey hunting season. The tag shall be proof of possession of the carcass by the above-mentioned licensee.

[Filed 5/18/05, effective 7/13/05]

[Published 6/8/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/8/05.

ARC 4231B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby rescinds Chapter 105, "Deer Population Management Areas," and adopts new Chapter 105, "Deer Population Management Zones," Iowa Administrative Code.

This new chapter simplifies the process for establishing special deer hunts and gives the Natural Resource Commission more flexibility in setting and administering special deer hunts and educational deer hunts.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 2, 2005, as **ARC 4033B**. A public hearing was held on March 22, 2005, in the Wallace

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State Office Building. No one attended. No comments on the proposed rules were received during the public comment period. One change was made from the Notice of Intended Action to clarify how licenses may be issued.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.8.

This amendment shall become effective July 13, 2005.

The following amendment is adopted.

Rescind 571—Chapter 105 and adopt the following new chapter in lieu thereof:

CHAPTER 105

DEER POPULATION MANAGEMENT ZONES

571—105.1(481A) Purpose. The purpose of this chapter is to establish special deer management zones, including educational hunts in those zones, on selected properties managed by the department, county conservation boards, cities, or other governmental jurisdictions, and on private lands. The purpose of the hunts shall be to ensure the harvest of an adequate number of deer to reduce economic and biological damage caused by high deer populations. Selected hunts in deer management zones may be educational hunts and limited to novice hunters to introduce them to deer hunting as a method of deer population control and to encourage safe and ethical hunting.

571—105.2(481A) Definitions.

“Commission” means the natural resource commission.

“Department” means the department of natural resources.

“Educational hunts” means hunts in special deer management zones that are limited to hunters who are being introduced to deer hunting.

“Special deer management zones” means defined units of public and private land, including state parks, state recreation areas, county parks, urban areas, and areas managed by other governmental jurisdictions.

“Urban deer management zones” means areas mostly within incorporated city limits including city, county, state, and private land.

571—105.3(481A) Special deer management zones. Special deer management zone boundaries, seasons, permitted weapons, and other conditions for hunting shall be designated annually by the commission.

105.3(1) Seasons. Deer hunting in a special deer management zone may occur only on dates established by the commission. Season dates may or may not coincide with seasons for general deer hunting outside special deer management zones.

105.3(2) Licenses. Every hunter must have in possession a paid special hunting license valid only for the specific special deer management zone. The hunting license shall specify dates of hunting and the type of deer that may be taken as designated by the commission. The special licenses will be issued at locations and on dates announced by the commission. Special licenses shall be issued to Iowa residents only and shall cost the same as deer licenses issued during the general deer seasons. The commission may establish procedures for issuing more than one license per person if quotas for any hunt do not fill, or if special circumstances limit the number of hunters that can be safely accommodated. Incentives, including but not limited to issuing additional antlerless-only or any-deer licenses, may be used to attract hunters to a special hunt.

105.3(3) Permitted weapons. Only weapons permitted during the general deer seasons may be used. The commis-

sion may limit the use of specific weapons in some deer management zones and seasons on a case-by-case basis to improve the safety of hunters and the surrounding area.

105.3(4) Hunter safety and proficiency. Hunters may be required to pass a weapons proficiency test or attend a meeting prior to hunting in special deer management zones. The meeting will be used to familiarize hunters with zone boundaries, location of private lands, safety areas around buildings, access points, objectives of the hunt and other aspects of hunting in a special deer management zone.

105.3(5) Checking deer. A hunter who takes a deer may be required to check the deer at a designated headquarters prior to leaving the area.

105.3(6) Educational hunts. Hunts in designated special deer management zones may be restricted to youth or novice hunters to introduce them to safe and ethical deer hunting.

a. Age, experience or other eligibility restrictions may be designated by the commission. Zones, seasons and other conditions for hunting will be designated the same as specified in 571—105.3(481A).

b. An adult must accompany each youth participating in an educational hunt. The adult must be licensed as specified in 571—subrule 106.10(1).

c. A novice, nonyouth hunter may be accompanied by an adult mentor. The mentor must have a valid hunting license and have paid the habitat fee, if otherwise required to do so.

571—105.4(481A) State parks and recreation areas. A public meeting shall be held in the vicinity of each state park or state recreation area before the park or recreation area is designated as a special deer management zone for the first time. The purpose of the meeting will be to assess the need for and interest in holding a deer population control hunt in that park or recreation area. A summary of public comments received at the meeting shall be included with other recommendations to the commission related to hunting in the state park or state recreation area.

571—105.5(481A) Urban deer management zones. Urban deer management zones will be established only upon request from a city government or special urban deer task force and when approved by the natural resource commission. Zones, seasons and other conditions for hunting will be designated the same as specified in 571—105.3(481A).

105.5(1) Special restrictions. Cities, deer task forces, or other public entities may require hunters to do one or more of the following: pass a hunter safety and education course, pass a weapons proficiency test, or be approved by the appropriate police department or conservation officer.

105.5(2) Other methods. The natural resource commission in cooperation with the city government may approve other methods of deer removal in urban areas.

571—105.6(481A) Iowa Army Ammunition Plant (IAAP) deer management zone. The IAAP deer management zone is defined as all federal land administered by the IAAP. Licenses, season dates and other conditions for hunting in the IAAP zone will be designated the same as specified in 571—105.3(481A). The IAAP may establish special restrictions for entering and hunting in the IAAP deer management zone.

571—105.7(481A) County park deer management zones.

105.7(1) Deer management zones will be established in county parks only after a request from county government and when approved by the commission. Zones, seasons and other conditions for hunting will be designated the same as specified in 571—105.3(481A).

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105.7(2) Special restrictions. County park managers may require hunters to do one or more of the following: pass a hunter safety and education course, pass a weapons proficiency test, or be approved by the appropriate county sheriff or conservation officer.

571—105.8(481A) Special deer management zones on private land. Special deer management zones may be established on private land when approved by the commission. Zones, seasons, and other conditions for hunting will be determined by the commission. Hunters will be required to comply with all applicable regulations specified in 571—Chapter 106.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.8.

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ARC 4244B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, Otter and Spotted Skunk Seasons," Iowa Administrative Code.

The amendments extend the muskrat season on selected marshes and add the bobcat and the gray (timber) wolf to the list of species with continuous closed seasons.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 30, 2005, as **ARC 4089B**. A public hearing was held on April 19, 2005. Two persons were in favor of adding gray wolves to the list, and one was opposed. There are no changes from the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments shall become effective July 13, 2005. The following amendments are adopted.

ITEM 1. Amend **571—Chapter 108**, title, as follows:

CHAPTER 108

MINK, MUSKRAT, RACCOON, BADGER, OPOSSUM, WEASEL, STRIPED SKUNK, FOX (RED AND GRAY), BEAVER, COYOTE, OTTER, BOBCAT, GRAY (TIMBER) WOLF AND SPOTTED SKUNK SEASONS

ITEM 2. Amend subrule 108.1(2) as follows:

108.1(2) Game management areas. Open season for taking muskrats on certain state game management areas, certain federal national wildlife refuges, and certain county conservation board areas, only where approved by the ~~natural resource commission~~ *wildlife bureau* and posted accordingly, shall be from 8 a.m. ~~the last Saturday in February through April 15 of succeeding year~~ *the day after the regular muskrat trapping season ends until April 15*. The use of leg-hold traps during this season is prohibited unless each trap is

placed completely inside a muskrat house. No bag or possession limit.

ITEM 3. Amend rule 571—108.6(481A) as follows:

571—108.6(481A) Otter, bobcat, gray (timber) wolf, and spotted skunk. Continuous closed season.

[Filed 5/18/05, effective 7/13/05]

[Published 6/8/05]

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ARC 4212B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners amends Chapter 261, "Licensure of Respiratory Care Practitioners," Chapter 262, "Continuing Education for Respiratory Care Practitioners," and Chapter 264, "Fees," Iowa Administrative Code.

These amendments adopt new rules to define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 16, 2005, as **ARC 4037B**. A public hearing was held on April 18, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. One public comment was received regarding the limitation on acceptable independent study hours. While the Board maintained the limitation on number of acceptable independent study hours, the Board did make other changes.

In paragraph 261.14(3)"b," the Board changed the number of continuing education hours from 24 to 48, instead of requiring the passing of a refresher course because of limited availability of such a course. As a result, subparagraph 261.14(3)"b"(3) was not adopted. Paragraph 261.14(3)"b" now reads as follows:

"b. If the license has been on inactive status for more than five years, an applicant must provide the following:

"(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

"1. Licensee's name;

"2. Date of initial licensure;

"3. Current licensure status; and

"4. Any disciplinary action taken against the license; and

"(2) Verification of completion of 48 hours of continuing education within two years of application for reactivation."

The Board added the words "at the time of audit" in subrule 262.3(1), paragraph "c," to make that paragraph consist-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

tent with those of other licensing boards. The paragraph now reads as follows:

“c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;”

In paragraph 262.4(4)“e,” the Board provided additional time to make up continuing education credits when the licensee shows a good-faith effort to meet continuing education requirements. Paragraph 262.4(4)“e” now reads as follows:

“e. If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.”

These amendments will become effective July 13, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 152B and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 261, 262, 264] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4037B**, IAB 3/16/05.

[Filed 5/12/05, effective 7/13/05]

[Published 6/8/05]

[For replacement pages for IAC, see IAC Supplement 6/8/05.]

ARC 4211B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners amends Chapter 263, “Discipline for Respiratory Care Practitioners,” Iowa Administrative Code.

This amendment adopts new subrule 263.2(30) to provide the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 16, 2005, as **ARC 4038B**. A public hearing was held on April 18, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice.

This amendment will become effective July 13, 2005.

This amendment is intended to implement Iowa Code chapters 147 and 152B.

The following amendment is adopted.

Adopt **new** subrule 263.2(30) as follows:

263.2(30) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation

of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

[Filed 5/12/05, effective 7/13/05]

[Published 6/8/05]

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ARC 4210B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 139A.3, the Department of Public Health hereby amends Chapter 1, “Notification and Surveillance of Reportable Communicable and Infectious Diseases, Poisonings and Conditions,” Iowa Administrative Code.

These amendments authorize the Department to accept required reports of reportable diseases by secure electronic means in addition to the current specified methods of mail, telephone, or facsimile. This change is being made because technological advancements in secure electronic transmission of information offer more efficient handling of disease reports at no additional cost and, in some circumstances, at reduced cost. Further, these amendments add information about reportable cancers and how they are to be reported.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 30, 2005, as **ARC 4081B**. One written comment was received from the University of Iowa recommending that the words “diagnostic” and “other” be added to the last sentence in Item 6. This change was made. Changes were also made to Item 7 at the advice of the assistant attorney general assigned to the Department: Health care providers were listed twice in the noticed rule; the first listing has been deleted. The words “health care” were added before the word “facilities.”

The State Board of Health adopted these amendments on May 11, 2005.

These amendments will become effective July 13, 2005.

These amendments are intended to implement Iowa Code section 139A.3.

The following amendments are adopted.

ITEM 1. Amend rule **641—1.1(139A)** by adding, in alphabetical order, the following **new** definition:

“Reportable cancers” means those cancers included in the National Cancer Institute’s Surveillance, Epidemiology and End Results (SEER) Program.

ITEM 2. Amend rule **641—1.2(139A)** as follows:

641—1.2(139A) Director of public health Authority. The director of public health is the principal officer of the state to administer disease reporting and control procedures. *The State Health Registry of Iowa, administered by the Department of Epidemiology of the College of Public Health at the University of Iowa, is a public health authority for purposes of collecting cancer data in accordance with this chapter.*

ITEM 3. Amend subrule **1.3(1)**, paragraph “b,” footnote, ***NOTE, as follows:

***NOTE: For these particular diseases, physicians and other health practitioners should not send a report to the department. *The department has delegated to the State Health*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Registry of Iowa has been delegated the responsibility for collecting ~~this these~~ data through review of records from hospitals, radiation treatment centers, outpatient surgical facilities, oncology clinics, pathology laboratories, and physician offices. Prior to collecting the data from an office or facility, the State Health Registry of Iowa shall work with the office or facility to develop a process for abstracting records which is agreeable to the office or facility.

ITEM 4. Amend subrule 1.4(2) as follows:

1.4(2) Reporting of other reportable diseases. Cases of other reportable diseases and conditions not included in 1.4(1) shall be reported to the department at least weekly by mail, telephone ~~or~~ facsimile, *or other secure electronic means*. If the department determines that reporting by mail hinders the application of organized control measures to protect the public health, the department may require that the disease or condition be reported by telephone.

ITEM 5. Add **new** subrule 1.4(4) as follows:

1.4(4) Each occurrence of a reportable cancer that is diagnosed or treated in an Iowa resident or occurs in a nonresident who is diagnosed or treated in an Iowa facility shall be reported to the State Health Registry of Iowa, administered by the Department of Epidemiology of the College of Public Health at the University of Iowa, by mail, telephone or electronic means.

ITEM 6. Add **new** subrule 1.5(4) as follows:

1.5(4) Reportable cancers shall be reported on the forms developed and distributed by the State Health Registry of Iowa. Data from the report forms will be supplemented with information obtained from records from hospitals, radiation treatment centers, outpatient surgical centers, oncology clinics, pathology laboratories, and physician offices through an abstracting process developed by the State Health Registry of Iowa. Tissue samples may also be submitted under the authority of this rule. The content of the reports shall include, but not be limited to, follow-up data and demographic, diagnostic, treatment, and other medical information.

ITEM 7. Add **new** subrule 1.6(9) as follows:

1.6(9) Occurrences of reportable cancers shall be reported by registrars employed by the State Health Registry of Iowa, registrars employed by health care facilities, and health care providers involved in the diagnosis, care, or treatment of individuals with a reportable cancer.

[Filed 5/12/05, effective 7/13/05]

[Published 6/8/05]

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ARC 4229B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99F.4(18), the Department of Public Safety hereby rescinds Chapter 23, "Closed Circuit Videotape Surveillance Systems on Excursion Gambling Boats," and adopts new Chapter 141, "Closed Circuit Surveillance Systems," Iowa Administrative Code.

Iowa Code section 99F.4 requires the continuous recording of all gambling activities on excursion gambling boats in compliance with rules established by the Department of Public Safety, while 491—subrule 5.4(7) extends these requirements to other gaming establishments. 2004 Iowa Acts, chapter 1136, section 33, amended the statutory requirement, which previously required that all such activities be videotaped. The change from videotaping to recording recognizes the introduction of new recording technology in recent years, specifically digital recording technology. In accordance with the prior statutory requirement, the administrative rules implementing this requirement have required videotaping.

Amendments to implement the transition from analog to digital recording were adopted through emergency rule-making procedures, effective July 1, 2004. The emergency amendments were published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3507B**. Publication of the emergency amendments was followed by a Notice of Intended Action that included the changes previously Adopted and Filed Emergency and additional changes, the need for which had been identified. Notice of Intended Action was published in the Iowa Administrative Bulletin on March 16, 2005, as **ARC 4066B**.

The Notice of Intended Action included the following changes to the rules on video surveillance systems in casinos:

- Chapter 23 was renumbered as Chapter 141, as part of a larger effort to reorganize and renumber all administrative rules of the Department of Public Safety to make them more accessible to those affected by the rules and the general public.
- The changes made in the emergency rule making, which was effective July 1, 2004, to allow digital recording as well as traditional analog videotaping, to require use of digital recording in newly licensed facilities, and to require transition to digital recording by 2011 are included in the new chapter. A reference to changing to digital recording equipment when a casino is remodeled or expanded, which was included in the emergency rule making, was deleted.
- Some references to excursion gambling boats were removed, in that these rules apply to all casinos in establishments licensed by the Racing and Gaming Commission. As explained in a note inserted in the new chapter, Iowa Code section 99F.4 assigns rule-making authority for video surveillance systems on excursion gambling boats to the Department, while the Racing and Gaming Commission by rule requires compliance with these rules by all other casinos.
- Various rules were edited to make them more compatible with the new language regarding "recording" rather than "videotaping," as that term was used prior to the emergency rule making, and to recognize technological changes in the gaming industry.
- An exception was provided to the requirement that a DCI agent approve surveillance coverage when a gaming area is moved that allows games to operate on approval of a Racing and Gaming Commission representative, pending approval by a DCI agent.
- The rule in former Chapter 23 regarding waivers of these rules had not previously been amended for consistency with the statute, and so was revised to reflect the requirements of waivers and exceptions to rules pursuant to Iowa Code section 17A.9A, which was implemented after Chapter 23 was first adopted.

A public hearing on these amendments was held on April 8, 2005. No comments regarding the Notice of Intended Action were received at the public hearing or otherwise, although there had been extensive discussions regarding the

PUBLIC SAFETY DEPARTMENT[661](cont'd)

proposed rules with a representative of the industry prior to the publication of the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective August 1, 2005.

These amendments are intended to implement Iowa Code section 99F.4.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind Ch 23; adopt Ch 141] is being omitted. These amendments are identical to those published under Notice as **ARC 4066B**, IAB 3/16/05.

[Filed 5/18/05, effective 8/1/05]

[Published 6/8/05]

[For replacement pages for IAC, see IAC Supplement 6/8/05.]

ARC 4230B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 100B.10, the Department of Public Safety hereby amends Chapter 251, "Fire Fighter Training and Certification," Iowa Administrative Code.

The Fire Service and Emergency Response Council is charged in Iowa Code section 100B.2, subsection 4, to "develop and submit to the state fire marshal for adoption rules establishing minimum training standards for fire service training that will be applicable statewide, periodically review these standards, and offer rules as deemed appropriate." The Council has been considering the development of minimum training standards for Iowa fire fighters since its inception in 2000. The Council approved a proposal for these rules at its meeting on February 5, 2004. The recommendation of the Council was adopted by the Fire Marshal, and the proposed rules were published in a Notice of Intended Action which appeared in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3482B**.

The proposed rules published in the Notice of Intended Action provided for the establishment of a minimum training standard for fire fighters in Iowa. The proposed standard would apply to fire fighters involved in fighting "structural" fires which create the greatest risks in fire fighting. Training requirements for fire fighters other than those engaged in structural fire fighting were also provided, as were requirements for continuing training for fire fighters. A definition for "structural fire fighting" was also proposed, which was the basis for the proposed core training requirement.

Two public hearings on the proposed rules were announced in the Notice of Intended Action. The first hearing was held on August 5, 2004, in Ames, Iowa. The second hearing was held on August 9, 2004. It originated from Ankeny, with access available from 20 sites around the state. Participants attended and spoke from 19 of the 20 sites.

At the August 2004 meeting of the Administrative Rules Review Committee, the Committee instructed the Department to complete a regulatory analysis of the proposed rules pursuant to Iowa Code section 17A.4A. The regulatory analysis was completed by the Department in February 2005, and

the complete text of the regulatory analysis may be obtained from the Department of Public Safety's Web site at www.dps.state.ia.us.

An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on September 29, 2004, as **ARC 3710B**, announcing that the period for accepting public comment on the proposed rules was extended indefinitely pending completion and publication of the regulatory analysis. A second Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on January 5, 2005, as **ARC 3906B**, announcing two additional public hearings, which were held on January 25, 2005, in Des Moines and on February 3, 2005, in Ames. A notice announcing the completion and publication of the regulatory analysis of the proposed rules, announcing a public hearing on the regulatory analysis, and announcing the deadline for accepting public comment was published in the Iowa Administrative Bulletin on March 16, 2005. The public hearing on the regulatory analysis was held in Ames on April 7, 2005.

Department representatives appeared before the Administrative Rules Review Committee at its August 2004 meeting to discuss the proposed rules, at which time the Committee instructed the Department to complete the regulatory analysis. The Department also appeared at Committee meetings in April 2005 to discuss the completed regulatory analysis and in May 2005 for a special review of the proposed rules.

All told, the Department received more than 50 separate comments on the proposed rules, with many of those who commented expressing support for the proposed rules and many expressing concerns about or opposition to the proposed rules.

Those supporting the proposed rules, who included representatives of the Iowa Firemen's Association, the Iowa Firefighter Group, the Iowa Fire Chiefs Association, and the Iowa Association of Professional Fire Chiefs, most often cited enhanced safety of fire fighters and those affected by fires as a reason for support, based on an expectation that required training would lead to enhancement of skills and awareness of and compliance with safety measures by fire fighters.

Those who expressed opposition to the proposed rules most often cited the burden placed on small, volunteer departments and expressed concerns that some departments would be unable to comply, with the possible consequence that some departments may cease to operate. There were also expressions of opposition to the idea of the state mandating standards for a volunteer activity.

Major concerns expressed and the Department's responses to them include the following:

CONCERN: The state should not mandate standards for volunteers.

RESPONSE: It is not unusual for mandatory requirements to be placed on volunteer activities which affect public safety. For example, reserve peace officers are required to complete training requirements established in Iowa Code chapter 80B, while volunteer emergency medical technicians are required to meet training requirements established in Iowa Code chapter 147A. The skills exercised by fire fighters, whether career or volunteer, directly affect the safety of each individual fire fighter, other fire fighters involved in responding to an incident, and the public. In addition, volunteer fire fighters differ from other volunteers in that they are covered by the state's workers' compensation statute, and those volunteer fire fighters who are paid on a "per call" basis are employees of their departments whose employment is subject to regulation by the Iowa Division of Labor Services under occupational safety and health regulations.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

CONCERN: The definition of "structural fire fighting" is so broad that it would effectively apply the training standard for structural fire fighters to all members of fire departments who respond to any emergency incident in any capacity.

RESPONSE: The definition of "structural fire fighting" in the Notice of Intended Action may have caused confusion. It read as follows:

"'Structural fire fighting' means fire fighting in a hazardous environment, for which a fire fighter needs personal protective equipment and self-contained breathing apparatus."

It is true that personal protective equipment is required to be worn in a wide variety of situations beyond those intended to be covered by the definition, including while riding in a fire department vehicle when responding to an emergency incident and while engaging in any activity on the fire ground. However, the self-contained breathing apparatus is required only while the fire fighter is in a hazardous environment, which is what is intended to be covered by the definition. To clarify the meaning, the definition of "structural fire fighting" in the adopted rules has been modified to read as follows:

"'Structural fire fighting' means fire fighting in a hazardous environment which requires the use of self-contained breathing apparatus."

CONCERN: The requirement for documentation by the "vendor" of training appears to imply that the training necessary to meet the requirements contained in the proposed rules would need to be provided by someone external to the department, presumably a professional "vendor" of training.

RESPONSE: The intent was not to require provision of any of the required training by outside vendors. All training may be provided by local fire departments as well as the Fire Service Training Bureau, community colleges, or regional fire training facilities. To clarify this intent, the word "vendor" has been removed from the adopted rules and each of the rules specifying a training requirement has had added to it a note stating that "Training to meet this requirement may also be provided by the fire service training bureau, a community college, a regional fire training facility, or a local fire department, or any combination thereof."

CONCERN: The cost of meeting the standards is beyond the means of some departments, especially small, all-volunteer departments.

RESPONSE: The regulatory analysis estimated the maximum total cost of course tuition for all fire fighters to meet the requirements for structural fire fighters to be \$1.44 million. This assumed that 9000 fire fighters would take the complete course of training required through the Fire Service Training Bureau, community colleges, or regional fire training facilities. State funds have been made available to offset these costs through the Fire Fighter Training and Equipment Fund each year since 1998.

Two changes have been made to minimize the potential impact of tuition costs for required training on volunteer fire fighters and their departments:

1. The deadline to meet the minimum training standard for structural fire fighting, set in the proposed rules at July 1, 2006, has been extended to July 1, 2010. Fire fighters will have nearly five years from the effective date of these rules to comply with the standard for structural fire fighting.

2. Based on annual amounts appropriated by the Iowa General Assembly to the Fire Fighter Training and Equipment Fund in recent years, money would be available from the fund to pay all tuition costs associated with compliance with the standard by volunteer fire fighters. To further ensure that fire fighters and departments are not saddled with these

costs, a provision has been added which will allow a department to apply for an extension to the deadline for one year at a time if the department has requested training to be paid for with funds from the Fire Fighter Training and Equipment Fund and funds have not been provided to offset the cost of the requested training.

Local departments may also provide in-house training to meet other requirements contained in these rules, in which case there would be no tuition costs. Materials needed to conduct the training locally can be obtained on loan from the Fire Service Training Bureau at no cost to the department conducting the training. If training is obtained from the Fire Service Training Bureau, a community college, or a regional fire training facility, state funds from the Fire Fighter Training and Equipment Fund are available to offset these tuition costs.

CONCERN: Both the initial training requirement for structural fire fighting and the continuing training requirement impose excessive time demands on volunteer fire fighters.

RESPONSE: The time needed to complete the initial training requirement for structural fire fighting is approximately 60 hours if the training is delivered to a class of 20 fire fighters. The time needed to deliver the training is somewhat less when fewer fire fighters are being trained at once. Sixty hours would amount to an average of 15 hours annually, if the training were not begun until July 1, 2006. At that point, the trainees would have four full years to comply. The continuing training requirement will be 24 hours annually. In many departments, in-house training exceeds this number of hours annually. If a fire fighter is unable to meet this requirement solely based on training offered by the fire fighter's own department, many departments will allow fire fighters from neighboring departments to participate in their training sessions. In addition, training to reach the number of hours required can be obtained from the Fire Service Training Bureau, a community college, or a regional fire training facility.

CONCERN: Training provided by the Fire Service Training Bureau involves attendance at several sessions to complete a module and no documentation is provided unless the trainee attends every session.

RESPONSE: A "certificate of completion" is not provided to a trainee who fails to attend the required number of sessions of a training module. However, there are often opportunities to make up missed sessions at alternate locations. The Fire Service Training Bureau will, upon request, provide assistance to any trainee in locating such opportunities. In addition, the Fire Service Training Bureau will, upon request, provide documentation of the actual number of training hours and subject matter completed by any trainee.

In summary, the following changes have been made from the Notice of Intended Action:

- The adopted amendments are included in Chapter 251, rather than Chapter 54 as originally proposed. Chapter 54 was renumbered as Chapter 251 in a rule making published in the Iowa Administrative Bulletin on September 29, 2004, as **ARC 3685B**.

- A definition of "emergency incident" has been added.
- The definition of "structural fire fighting" has been modified to clarify that only situations in which the use of self-contained breathing apparatus is required are included in the definition.

- NFPA, the acronym for the National Fire Protection Association, was defined in the proposed rules. This definition was incorporated in Chapter 251 in a prior rule making and is no longer needed in this rule making.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

- All requirements in the adopted rules have an effective date of July 1, 2010.
- A clarifying note has been added to each training requirement, indicating that the training may be obtained from a variety of sources, including a local fire department.
- An exception has been provided to the training requirement for structural fire fighting, allowing a local department to apply for extension on a year-to-year basis of the deadline for meeting the standard, provided that the department making application for an extension has applied for funds from the state Fire Fighter Training and Equipment Fund and has not received funds sufficient to defray the tuition costs of the required training.
- A reference to documentation of training records including identification of the "vendor" providing the training has been changed to require identification of the "person or persons" providing the training.

These amendments will become effective August 1, 2005.

These amendments are intended to implement Iowa Code chapter 100B.

The following amendments are adopted.

ITEM 1. Amend rule 661—251.1(100B) as follows:

Amend the introductory paragraph as follows:

661—251.1(100B) Definition Definitions. The following ~~definition applies definitions apply~~ to rules 661—251.1(100B) to 251.204(100B):

Adopt the following **new** definitions in alphabetical order:

"Emergency incident" means any incident involving a fire or other hazardous situation to which personnel of a fire department respond.

"Structural fire fighting" means fire fighting in a hazardous environment which requires the use of self-contained breathing apparatus.

ITEM 2. Adopt the following **new** rules:

MINIMUM TRAINING STANDARDS

661—251.101(100B) Minimum training standard. On or after July 1, 2010, any member of a fire department shall have completed the training requirements identified in the job performance requirements for the fire fighter I classification in NFPA 1001, Standard for Fire Fighter Professional Qualifications, 2002 edition, chapter 5, prior to the member's engaging in structural fire fighting. Each fire department shall identify its members who are or will be engaged in structural fire fighting and shall ensure that any member engaged in structural fire fighting on or after July 1, 2010, has completed the training requirements specified in this rule prior to the member's engaging in structural fire fighting.

NOTE: A fire fighter is not required to be certified to meet this requirement. Training to meet this requirement may be provided by the fire service training bureau, a community college, a regional fire training facility, or a local fire department, or any combination thereof.

EXCEPTION 1: A fire fighter who received training which complied with the job performance requirements for the fire fighter I classification contained in an earlier edition of NFPA 1001 shall be deemed to have met this requirement, provided that records documenting the training are maintained in accordance with rule 661—251.104(100B).

EXCEPTION 2: The chief or the training officer of any fire department may apply to the fire marshal by June 1 of any year for an extension of the deadline to meet the training requirement for members of the department engaged in structural fire fighting. Any such extension shall be for one year and may be renewed annually upon application. An extension

shall be granted only if the department has requested training required under this rule, with training costs to be offset through funding from the fire fighting training and equipment fund, pursuant to 661—Chapter 259, and funds to offset the cost of the training have not been available or have been inadequate to fully offset the cost of the training. The extension may be for all or some of the fire fighters in the department. The application shall be in a form specified by the fire marshal and shall list by name each fire fighter for whom an extension is requested. The extension, if granted, shall list by name the fire fighters to whom the extension applies and shall apply only to those listed.

661—251.102(100B) Other training. Any member of a fire department who serves in a capacity other than structural fire fighting at an emergency incident on or after July 1, 2010, shall have received training based on the duties the member might perform at an emergency incident. Training to meet this requirement may be provided by the fire service training bureau, a community college, a regional fire training facility, or a local fire department, or any combination thereof.

661—251.103(100B) Continuing training. After July 1, 2010, fire department members shall participate in at least 24 hours of continuing training annually, which shall be selected from the following subject areas:

- Personal protective equipment and respiratory protection
- Structural fire fighting techniques including standard operating policies or standard operating guidelines
- Ground ladders
- Hose and hose appliances
- Ventilation
- Forcible entry
- Search and rescue techniques
- Fire fighter safety
- Incident management system or incident command system
- Emergency vehicle driver-operator
- Hazardous materials first responder—operations level
- Emergency medical service (EMS) training
- Additional training based on standard operating procedures or standard operating guidelines
- Other Occupational Safety and Health Administration (OSHA)-related training, such as blood-borne pathogen protection
- Specialty training such as confined space entry, vehicle extrication, rescue techniques, wildland or agricultural fire fighting techniques
- Emergency response to terrorism
- Any other training designed to meet local training needs

NOTE: Training to meet this requirement may be provided by the fire service training bureau, a community college, a regional fire training facility, or a local fire department, or any combination thereof.

661—251.104(100B) Record keeping. Each fire department shall maintain training records for each individual member of the department who participates in emergency incidents. These training records shall identify, for all training completed by the individual fire fighter, the person or persons who provided the training, the dates during which the training

PUBLIC SAFETY DEPARTMENT[661](cont'd)

was completed, the location or locations where the training was delivered, and a description of the content of the training.

[Filed 5/18/05, effective 8/1/05]

[Published 6/8/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/8/05.

ARC 4204B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 327F.38, the Department of Transportation, on May 10, 2005, adopted an amendment to Chapter 810, "Railroad Safety Standards," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the March 16, 2005, Iowa Administrative Bulletin as **ARC 4053B**.

Iowa Code section 327F.38 (2004 Iowa Acts, chapter 1175, section 334) requires the Department to adopt rules requiring railroads in the state to provide reasonable and adequate access to first aid or medical treatment for employees injured in the course of employment. New rule 761—810.4(327F) is adopted to implement this rule-making requirement.

This rule does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

This rule is identical to the one published under Notice of Intended Action.

This rule is intended to implement Iowa Code section 327F.38.

This rule will become effective July 13, 2005.

Rule-making action:

Adopt **new** rule 761—810.4(327F) as follows:

761—810.4(327F) First aid and medical treatment for railroad employees.

810.4(1) Railroad employees who are injured in the course of employment shall have reasonable and adequate access to first aid or medical treatment. A railroad or railroad employee shall not:

a. Deny, delay or interfere with first aid or medical treatment for any railroad employee who is injured in the course of employment.

b. Discipline or threaten to discipline any railroad employee for requesting first aid or medical treatment when the employee is injured in the course of employment.

810.4(2) All railroads operating in the state must make reasonable efforts to have emergency first-aid kits available

at locations where railroad employees perform their employment duties.

810.4(3) Nothing in this rule shall be construed to require a railroad or railroad employee to perform first aid or medical care.

This rule is intended to implement Iowa Code section 327F.38.

[Filed 5/11/05, effective 7/13/05]

[Published 6/8/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/8/05.

ARC 4220B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, 476.73, 476.74, and 476.100 (2005), the Utilities Board (Board) gives notice that on May 17, 2005, the Board issued an order in Docket No. RMU-05-3, In re: Revisions to Affiliate Reporting Rules [199 IAC 31], "Order Adopting Amendment." The order adopted an amendment which was published under Notice of Intended Action in IAB Vol. XXVII, No. 19 (3/16/05) p. 1266, as **ARC 4065B**.

The amendment is made to 199 IAC 31, which contains utility affiliate reporting requirements. The purpose of the amendment is to give the Board information it needs to monitor the effects of allowing a competitive local exchange carrier (CLEC) to provide telecommunications service in the same service area as an incumbent local exchange carrier (ILEC) with which it is affiliated.

Written comments were filed by the Rural Iowa Independent Telephone Association, Cox Iowa Telcom, L.L.C., the Consumer Advocate Division of the Department of Justice, and Qwest Corporation. The comments did not result in any changes to the amendment. The Board's order adopting the amendment can be found on the Board's Web site, www.state.ia.us/iub.

The amendment will become effective July 13, 2005.

This amendment is intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.73, 476.74, and 476.100.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [31.4 to 31.9] is being omitted. This amendment is identical to that published under Notice as **ARC 4065B**, IAB 3/16/05.

[Filed 5/18/05, effective 7/13/05]

[Published 6/8/05]

[For replacement pages for IAC, see IAC Supplement 6/8/05.]



SENATE FILE 350


AN ACT


RELATING TO CHILD SUPPORT RECOVERY INCLUDING ACCESS TO INFORMATION FOR THE PURPOSES OF RECOVERY, PROVISIONS RELATING TO FAILURE TO WITHHOLD INCOME OR TO PAY THE AMOUNTS WITHHELD, AND TO THE SUSPENSION OF A CHILD SUPPORT OBLIGATION, THE SATISFACTION OF SUPPORT PAYMENTS, NULLIFYING RELATED ADMINISTRATIVE RULES AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:...


Sec. 20. NULLIFICATION OF RULES. The following rules are nullified:

1. 441 IAC 98.22.
2. 441 IAC 98.23.
3. 441 IAC 98.33.
4. 441 IAC 98.92.


JOHN P. KIBBIE
President of the Senate


CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 350, Eighty-first General Assembly.


MICHAEL E. MARSHALL
Secretary of the Senate

Approved May 5, 2005


THOMAS J. VILSACK
Governor

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